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CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol

Annapolis, Maryland.

December 4, 1967 - 2:05 p.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:
C. J. Hunt
and
D. Fitzgerald

Maryland
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folio

JOSEPH RUZICKA, INC.

1 P R O C E E D I N G S

2

3 THE PRESIDENT: The Sergeant at Arms will

4 clear the aisles and close the doors.

5 the Convention will please come to order.

6 The invocation today will be offered by the

7 Reverend John P. Gates of the Bethesda First Baptist

8 Church in Bethesda, Maryland, Montgomery County.

9 Reverend Gates.

10 REVEREND GATES: Let us pray.

11 Eternal God, Father of Mankind, whose concern

12 is the fulfillment of all Thy creation, we take a moment

13 to reflect upon our responsibilities, and the choicies

14 before us, in this session of the Constitutional Conven-

15 tion of the State of Maryland; to examine what we say

16 and do in the light of the justice and mercy which Thou

17 doth expect of worthy citizens and responsible leaders.

18 We thank Thee for the heritage of freedom

19 and justice in this state; for those who in the past con-

20 scientiously gave of themselves that there may be a

21 better life among us.

1 We confess, that too often power has created and
2 permitted injustices that have put certain of our citizens
3 at a disadvantage; too often special privilege without
4 real justification has prevailed among us. Indeed, all
5 of us, in every station in life, have been less than we
6 could have been, had we been more faithful to Thee.
7 Grant now that the great and unusual opportunity
8 presented to us in the calling of this Convention may be used
9 to increase freedom, justice and mercy in the land; that
10 with renewed thought, discipline and mutual trust, a more
11 worthy Commonwealth may emerge, under Thee.
12 Grant especially that all political, economic
13 and spiritual power, may be used in this session for the
14 common good; that an example be set for all our citizens,
15 young and old, as to what responsible government means in
16 our time.
17 May each person gathered here today, in what-
18 ever capacity, be given wisdom that is born of looking
19 to Thee for guidance; that all decisions may be grounded
20 in the good judgment that seeks to benefit all people
21 within this state, and nation and beyond, throughout the

1 world. Help all of us, in every situation in life, to
2 rise above that natural concern of self-interest which so
3 easily degenerates into unbridled selfishness and lack of
4 concern for others; to live and act according to Thy Will,
5 oh God, who looks at life as a whole, and whose passion
6 and concern is the good of all thy creatures, Amen.
7 THE PRESIDENT: Roll call.
8 (The roll was called.)
9 THE PRESIDENT: Has every delegate answered
10 roll call?
11 The Clerk will record the roll call.
12 There being a quorum present, the Convention
13 is in session.
14 The Chair recognizes Chairman Powers, Chairman
15 of the Committee on Calendar and Agenda.
16 DELEGATE POWERS: Mr. Chairman, I move adoption
17 of Debate Schedule 9, which covers debate on Committee
18 Recommendation Number SF-2.
19 THE PRESIDENT: Is there a second?
20 All in favor signify by saying Aye; contrary,
21 No. The Ayes have it and it is so ordered. Debate Schedule

9 is adopted.

Delegate Powers.

DELEGATE POWERS: I move the adoption of the debates calendar.

(The motion was seconded.)

THE PRESIDENT: All in favor signify by saying Aye; contrary, No. The motion is carried and the calendar is adopted.

The Chair recognizes Delegate Beachley.

DELEGATE BEACHLEY: Mr. President, I would like to announce that we have 72 students from Hagerstown High School. They are seated on the balcony to the rear of the Delegate chamber. Among the 72 is Mr. John Grumbacher, the son of our distinguished delegate, Richard Grumbacher.

The students are accompanied by their teachers, Miss Vicky Westfal, an English Teacher, Mr. Robert Lochbaum, who is the guidance Counsellor, and Mr. Tyler Peter, a teacher of contemporary challenge. Mr. Peter is the son of the former state Senator, Mr. Robert Peter, who was from Montgomery County.

1 THE PRESIDENT: Thank you. We are delighted to
2 have them with us. (Applause.)
3 The Chair recognizes Delegate Cardin.
4 DELEGATE CARDIN: Mr. President and ladies
5 and gentlemen of the Convention, it is my pleasure to
6 draw your attention to the presence of 89 students of
7 the Pikesville Senior High School of Baltimore County,
8 accompanied by their teachers, Miss Swindell and Miss
9 Valeigh.
10 I hope you will give them a cordial welcome
11 and that they will profit from our deliberations.
12 THE PRESIDENT: The Convention is delighted to
13 have them here. (Applause.)
14 The Chair recognizes Delegate Stern.
15 DELEGATE STERN: Mr. President and Chairman of
16 the Convention, I wish to call your attention to Delegate
17 Boileau, who is wearing in his button hole a black-eyed
18 susan, presented to him by Miss Susan McCaffray, Mr.
19 Martineau's Secretary. This was done on the basis that
20 one good turn deserves another.
21

1 THE PRESIDENT: Delegate Mosner.

2 DELEGATE MOSNER: The wife of our former United States,

3 Senator J. Glenn Beall, looking as young as any of

4 them. (Applause.)

5 THE PRESIDENT: Delighted to have you. (Applause.)

6 Delegate Bradshaw.

7 DELEGATE BRADSHAW: I would ask you to share

8 with the Montgomery County Delegation a piece of good news,

9 and that is that Delegate E. J. Clarke from Montgomery

10 County yesterday became a grandfather. I understand

11 this is the first such event in his life. (Applause.)

12 THE PRESIDENT: Delegate Burdette.

13 DELEGATE BURDETTE: Mr. President, I should like

14 to ask the Convention to welcome to the rear gallery the

15 wife of the Reverend John P. Gates of Bethesda.

16 THE PRESIDENT: We are delighted to have Mrs.

17 Gates with us. (Applause.)

18 THE PRESIDENT: Any other announcements?

19 Reports of Committees?

20 Committee Report C&A-1, the Clerk will read the

21 report.

1 MR. QUILLEN: Committee Report Number C&A-1
2 by the Committee on Calendar and Agenda, Ralph W. Powers,
3 Chairman.
4 A report on Resolution Number 19 by Delegate
5 Chabot proposing the extension of the session of the
6 Convention through January 12, 1968.
7 THE PRESIDENT: The Committee Report Number
8 C&A-1 will be referred to the Committee on Calendar and
9 Agenda. The Chair requests that if possible, that the
10 report be put on the calendar for action of the session
11 in Convention this evening.
12 Are there any other motions or resolutions?
13 If not, the Chair recognizes Delegate Powers.
14 DELEGATE POWERS: Mr. President, I move the
15 Convention resolve itself into a Committee of the Whole
16 for the purpose of considering the general orders of the
17 day.
18 THE PRESIDENT: Is there a second?
19 All in favor signify by saying Aye; contrary,
20 No. The Ayes have it, and it is so ordered.
21 (Whereupon, at 2:20, p.m., the Convention

resolved itself into the Committee of the Whole.

(The mace was removed by the Sergeant at Arms.)

THE CHAIRMAN: The Committee of the Whole will please come to order.

The first item for consideration on the calendar of the Committee of the Whole is Committee Recommendation Number SF-2. The Chair recognizes Delegate Sherbow, and requests that he come forward to the reading desk to present the report.

I call to your attention while Delegate Sherbow is coming forward that although there is one debate schedule for 4 reports on the Committee of State Finance, each of the reports will be considered separate so that we will proceed to a presentation and debate on each report seriatim.

Delegate Sherbow.

DELEGATE SHERBOW: Mr. Chairman and ladies and gentlemen of the Committee of the Whole, we will shortly have 4 reports of the Committee on State Finance and Taxation; the first is the report on lotteries, which is SF-2.

1 Thereafter, we will take up the report dealing
2 with taxes and assessments, which is SF-3, and this will
3 be presented to you by Delegate Case, who is the Vice-
4 Chairman of our Committee on State Finance and Taxation.
5 Then we will have SF-4, which deals with state
6 indebtedness, and then SF-5, dealing with budget and
7 appropriations, the latter two of which I will present
8 to you.
9 We are now dealing with our proposal relating to
10 the subject of lotteries. Our proposal is very brief.
11 It contains a total of 12 words, and it says "Lotteries
12 shall not be sanctioned by the State or its political
13 subdivisions."
14 You will find some new language in this proposal,
15 this recommendation, because for the first time in dealing
16 with the subject of lotteries you see the boards or its
17 political subdivisions and this I will go into in a
18 moment or two.
19 First, let me give you a very brief history
20 of the subject of lotteries. Much of this you are
21 aware of, all of you have read and undoubtedly re-read the

1 report of the commission dealing with the Convention and
2 its comment on the subject of lotteries.
3 But briefly, its history goes back into
4 Colonial days when in order to finance various enter-
5 prises, some of a civic and some of a religious nature, we
6 had in the state of Maryland various forms of lotteries.
7 The state would grant to a particular group or
8 to an institution the right to sell lottery tickets for
9 the purpose of raising money for the construction of
10 some building in some worthy cause. One of the purposes
11 of these lotteries was rather simple, it enabled those
12 dealing with sectarian institutions to call on others of
13 different faiths to help them in the hope and with
14 the possibility that they might in some way gain by reason
15 of the purchase of the lottery ticket.
16 They were really for community purposes, but as
17 they increased in size, they ceased to be community pro-
18 jects. Competition began between those who were selling
19 lottery tickets for one enterprise, and those who were
20 selling them for another.
21 Then it became necessary for the legislature

1 to extend the life of one lottery after another. I sup-
2 pose the one you have heard most about is the Washington
3 Monument Lottery. It was authorized in 1810. In 1820
4 it was still in operation. Finally in 1829 it was
5 completed and the only way they could complete it was
6 for the General Assembly to grant $178,000.
7 The lottery did not itself produce the necessar
8 funds. Too much of it went into the pockets of those
9 who were running the lottery.
10 Then there came over the years what we
11 see happening all over this country and elsewhere, where
12 there were easy pickings, in marched the organized gamblers.
13 They were the ones who could come in and what started
14 out as a good enterprise, so they thought, became wrec d
15 by reason of what they were doing.
16 We found that in Maryland we were having a
17 pretty bad time of it, but it took a governor of New York
18 a long, long time later to sum it up when he said,
19 dealing with the history of lotteries throughout its entire
20 history in the United States and abroad, legalized
21 gambling has brought nothing but poverty, crime and

1 corruption.

2 This is the statement of Governor Thomas E.

3 Dewey of New York.

4 The legislature as early as 1792 in Maryland

5 found that it had to regulate lotteries. By late 1834

6 they had become such an acknowledged evil in Maryland that

7 efforts were under way to suppress them.

8 The efforts continued, but it took 20 more years

9 before they could get legislation through to end them,

10 but like the phase-outs that are supposed to be taking

11 place in some parts of Maryland of other matters, even the

12 adoption of a Constitutional prohibition against lottery

13 proved ineffective for a long while, because there

14 weree lotteries still in effect whose life had not

15 expired.

16 It wasn't until 1860 long after the efforts had

17 been put on the statute books, that the General Assembly

18 succeeded in bringing about the suppression of the

19 lottery.

20 What we are dealing with in this particular

21 matter before you today is this situation. If you approve

1 the recommendation of this committee it means that the
2 General Assembly will have no power to pass any legisla-
3 ture giving the right to grant a lottery permit or a
4 lottery grant to anyone whether it is a corporation, an
5 individual, or a political subdivision of the state,
6 meaning a city or a county.
7 If you turn this recommendation down, then it
8 will mean that the legislature may grant lotteries, may
9 provide for the manner of their operation, but I ask you
10 to keep this one thing in mind, because in a few moments
11 I will go into it in detail.
12 We have passed by our action in connection
13 with the local government provisions a series of recom-
14 mendations with respect to local government. They will
15 have their home rule, they will retain the powers which
16 they have at the present time, with respect to changes in
17 taxing power or the judiciary on the local level, the
18 local subdivisions, meaning the cities as well as the
19 counties, will retain all of the power that they have.
20 I ask you to keep in mind that if the Consti-
21 tution of Maryland removes the restraint on lotteries,

1 unless and until the legislature acts, the local subdi-
2 vision may issue their own lottery grants.
3 This may provide this state with something
4 inconceivable and unheard of. Now bear this in mind, it
5 is true that the General Assembly, if it wishes, could
6 take this power away from the local subdivisions, as
7 it only with the state.
8 Our recommendation is that the General Assembly
9 not have this power but that the restraint be in the Con-
10 stitution.
11 We have found from our studies, from our hearings
12 that lotteries have a debilitating effect on the economy
13 and on the tax structure of the state.
14 This something for nothing psychology that is in-
15 herent in lotteries we think adversely affects the will
16 of the people to face up to public needs and to pay
17 for them.
18 Now, what is the result of lotteries for tax
19 revenues? In the 1966 September issue of the magazine
20 "Taxes", Professor Rosen, Professor of Economics at the
21 University of New Hampshire, concludes in this fashion, and

1 I quote, "No lottery can be expected to have a
2 significant impact on either Federal or State public
3 finances over any sustained period of time. Gross revenue
4 let alone net revenue raised by this means will always
5 be negligible as a percentage of total returns from other
6 sources. Whatever amount is collected, it will be at
7 relatively great administrative cost."
8 This has been found to be sadly true in the
9 states of New York and in New Hampshire. I am sure that
10 there will be some details given to you in the course of
11 this discussion showing full well that what was
12 promised was pie in the sky, but it just didn't come out
13 that way.
14 I am going to anticipate the minority report
15 in this discussion, because I think it is best to let
16 you know how the issues come into focus.
17 The majority believes that legalized lotteries
18 breed other forms of gambling. We do not accept the
19 argument that the legalization and control of lotteries
20 would assist in the suppression of gambling rackets, be-
21 cause this is not born out by history.

1 We refer you to the January 13, 1964 report of
2 the Baltimore Criminal Justice Commission on Legalized
3 Gambling. We also point out that lotteries bear most
4 heavily on the poor. They weaken the belief that re-
5 ward will come from effort, and as a form of revenue
6 they are more regressive than any other known tax.
7 They take their toll from those who are least
8 able to pay.
9 Now, you have before you this decision to face
10 up to squarely. Is the removal of lotteries from the
11 Constitution, is the granting to the legislature of
12 this unlimited power to grant lotteries of Constitutional
13 import?
14 I don't think that anyone can argue that adding
15 12 words to this particular Constitution ought to give
16 you any concern. I pass that over. The real question is:
17 is this of Constitutional dimension.
18 I remind you that lottery grants have been
19 prohibited by all 4 Maryland Constitutions heretofore.
20 The one of 1776 by later amendment, the one of 1851,
21 the Constitution of 1864, the Constitution of 1867.

1 The Constitutions of 35 other states also con-
2 tain provisions like Maryland's against lotteries.
3 We think it is rather typical to say that a ban
4 on lotteries is not of constitutional dignity when you
5 realize that 35 other states think so and Maryland has
6 thought so since the 1839 amendment to the 1776 Constitu-
7 tion.
8 I say also to you because of the statement
9 we have made and because of the argument we believe will
10 come from the minority that organized gambling interests
11 will show, they will expect the legislature to listen to
12 their please that we should grant these lottery oppor-
13 tunities to nice people which we believe will give them
14 the opportunity to muscle in and take over.
15 We know the very simple situation that has
16 developed in some parts of Maryland where slot machines
17 came into effect, and with all the power and prestige
18 of the state of Maryland acting with all of the energy
19 commanded by the Honorary President of this Convention
20 and until recently governor of Maryland, all of this effort
21 was required to phase out what the rest of the state felt

1 was an evil influence, this whole lottery picture.

2 We believe that we will be relieving the

3 legislature of the turmoil and pressure, the constant

4 effort to have the legislature lessen the bars, lower them

5 and grant these people the right to operate.

6 You now have a new situation. You have a

7 situation where local subdivisions, unless restrained by

8 the legislature, will have the right to operate lotteries.

9 Now, we have asked you to consider this from

10 this point of view. How can the legislature having the

11 power to grant lotteries and permits say: We will grant

12 lottery permits and not strike down the phase-out of

13 gambling through the slot machine in the southern counties

14 of Maryland, because if you are going to grant the

15 lotteries, their argument is going to be, why not leave

16 what you intended to strike out?

17 If the lottery ban is continued in the

18 Constitution, we relieve the legislature of this kind of

19 pressure. The legislative leaders have given no indi-

20 cation that they want the power or the right to grant

21 lotteries or lottery permits. They made their positions

1 clear, I believe you will hear from one of them, I know
2 you will hear today with respect to the views of the
3 General Assembly.
4 Now, we do not believe that the lottery situation
5 is looking out of, and here I am using some of the words
6 of a minority report, an isolated and emotional issue
7 because other forms of gambling are permitted.
8 Here let me discuss with you the fallacy of
9 that argument. Our committee voted I think it was 10 to
10 4 to put this restraint, this ban into the Constitution
11 with only one absention. We had before us the proposal
12 dealing with the whole idea.
13 We also had before us another proposal offered
14 by three delegates which went into great detail suggesting
15 how lotteries should be operated, who should get the
16 benefits and the money from them in the form of a page
17 and a half of statutory language about how to operate
18 the lottery and who should and how you get the benefits
19 from it.
20 And we also had from another delegate who will
21 speak here today a proposal out of which our report and

1 recommendation was distilled, namely no more lottery grants
2 and no more opportunities for the state to permit them to
3 be paid, because they will be restrained by the Consti-
4 tutional prohibition.
5 At the hearing we heard the argument that if
6 you put in this restraint against lotteries there will
7 thereupon be a restraint also against bingo. We heard the
8 arguments that also if you listened and read carefully
9 what has been in the Constitution, all it said was: there
10 shall be no lottery grants by the state.
11 All of this has been set to rest by the statu-
12 tory law of this state and by opinions of the attorney
13 general. A long time ago, more than 30 years ago, the
14 attorney general ruled that the present provision in the
15 Constitution prohibits the state from authorizing a lot-
16 tery to be operated either by the state or by an individual,
17 so that the language means neither the state nor an
18 individual could operate a lottery, and this has not been
19 challenged or attacked since 1935, and no lottery has been
20 granted.
21 Thereafter, the subject arose as to whether or

1 not bingo is legal. Bingo is operated by reason of the
2 fact that the state of Maryland through the General
3 Assembly has granted under the criminal statutes, under
4 its present laws, a distinction saying that bingo is not
5 a crime and, therefore, they passed a statute in which
6 they regulated bingo.
7 Prior to that, there had been three opinions
8 of the attorney general of Maryland, each of them dealing
9 with the subject of these bingo statutes and each of them
10 holding that the question before them was one that dealt
11 with a valid statute, namely, the right to operate
12 bingo under the law.
13 On the subject of whether or not these matters
14 are proper for our legislature to determine because the
15 argument is made: if you operate bingo, if you operate
16 the pari-mutuel tracks, why don't you operate the lotteries
17 by the state?
18 My answer is simply this, that under the statutes,
19 the legislature and the public policy of this state has
20 been, as I understand it, simply this, that on these
21 fire engine volunteer areas of the bingo operation, on

1 these small minor church operations, as long as they keep
2 within the statute, they have construed them as not
3 including lottery.
4 I hold no brief for either side. This is a
5 matter which is of such a nature that one can very easily
6 say that unless and until they move in from the outside
7 to take over, and I have no evidence to indicate to what
8 extent this is or is not taking place, as long as the
9 state of Maryland regulates its racing and determines that
10 racing as now regulated is a subject matter which it
11 deems to be proper as long as properly regulated, then I say
12 to you these are matters which have been laid to rest.
13 If you disagree or quarrel with them, there is
14 the legislature. You may pet them, you may have your cause
15 heard.
16 On the subject of Bingo, an effort has been
17 made to construe Bingo as lottery, two decisions of the
18 lower court hold that it is not.
19 I think there is a case pending now before the
20 Court of Appeals where somebody who lost money at
21 Bingo said it is a lottery and they are entitled to get their

1 money back, and I do not and would never presume to say
2 what the Court of Appeals would do on any given case, but
3 as the law stands, I give you my measured judgment the
4 fact that Bingo is not affected by our decisions here
5 with respect to lottery grants.
6 Now, with respect to the rights of the political
7 subdivisions, because here you now have for the first
8 time a totally new issue, I hope that this issue can be
9 presented to those of you who hold the view that this is
10 not of Constitutional import, and I hope that I can change
11 that attitude on your part.
12 We have after much discussion, after much
13 effort, passed a local provision, we have said to the lo-
14 cal governments: these are the powers which you shall
15 have. We have said to them that on taxation powers the
16 General Assembly may take them away. You cannot legislate
17 on matters involving the judiciary. You keep the powers
18 that you have until the state takes it away, but now if
19 you do not put in this restraint against lottery in this
20 Constitution, this is what can happen.
21 Every political subdivision can reach the

1 conclusion that it can operate its own lottery; mind you,
2 this is not a tax, this is a right which I assume the
3 political subdivision would have. It can operate a lot-
4 tery, let us say for a swimming pool. It can operate a
5 lottery, let us say, for a golf course, and having that
6 power, the adjacent county or the adjacent city can say: We
7 will operate a lottery and ours will be for a totally dif-
8 ferent purpose and you will soon see proliferated through-
9 out the state of Maryland, one of the sorriest spectacles
10 of each particular local government and county government
11 seeking to take advantage until the people stop it, of
12 what might be a loophole in what we have done.
13 Now, I grant you that at the next session of
14 the legislature this power can be taken away but it is
15 going to be hard to argue that if it is all right for
16 the state to do it, why can't the county -- I find it
17 hard to argue that to people who want to grant these
18 lottery permits.
19 One of the other arguments that we have
20 made is to say to you that granting lottery permits,
21 that granting the right for lottery doesn't stop the

1 corruption and the gambling controlled by the professionals.

2 Anybody who knows the facts of life knows that

3 this is so. I do not say to you that you consider me

4 or yourselves as authorities. Let me read to you from

5 the Washington Post of November 21, 1967.

6 I assure you I am not going back to Jefferson's

7 days, I am not going back to even ten years ago, I am

8 going back just a few weeks and here is a dispatch dealing

9 with gambling in Great Britain, and this is what they

10 say.

11 "Seven years ago Britain authorized legal

12 gambling and set off a boom in which billions of dollars

13 changed hands most of it finding its way into the pockets

14 of the betting shop owners and the gambling house pro-

15 prietors."

16 And now I beg of you to listen to the next

17 paragraph.

18 "With the boom came an influx of criminals inclu-

19 ding members of the Mafia, either acting on their own or

20 observing the gambling scene for possible large-scale

21 investment by foreign organizations." I do not quote

1 myself any longer as I felt I was 15 years ago or 17 years
2 ago an authority on this subject. I simply quote to you
3 what has happened;when I say the professional, when I
4 say the Mafia, I am reading what others say.
5 I think everybody here would agree that if ever
6 you were going to quote from a conservative journal, you
7 would say that the Wall Street Journal is about as conser-
8 vative as they come.
9 I have here a report, December 27, 1966, less
10 than a year ago, a report from one of their staff
11 reporters in which he says , quoting the Home Secretary
12 as follows:"This country has become a gamblers paradise,
13 More wide-open in this respect than about any other
14 comparable country. This, in itself, would be objection-
15 able to many people, but what is worse is the close and
16 growing connection between gaming clubs and organized
17 crime, often violent crime in London and other big cities."
18 I am not a prophet of doom. The language
19 used by the minority in which they say that they do not
20 believe we need fear any such influx, I say to you is
21 answered not by me but by those who are experiencing it

1 today.

2 Now, we have to face this problem. If we take

3 this out of the Constitution, what will its effects be? I

4 do not go back now in history more than four weeks.

5 The State of Rhode Island has a Constitutional

6 Convention in session. Unlike ours, it is open ended.

7 It has been going on for a couple of years.

8 They came up with their proposal; In their

9 proposal they did what the minority asks us to do, to take

10 out the restraint on lottery. That proposal, that

11 Constitution was to be submitted to the voters of Rhode

12 Island four weeks ago tomorrow on November 7, 1967.

13 They withdrew that Constitutional proposal in its

14 entirety from the voters of Rhode Island because the

15 whole Constitution faced defeat in toto and the major reason

16 for it was the elimination from the Constitution for

17 Rhode Island of this restriction on lottery.

18 Let me read you from the Providence Journal

19 of September 17, 1967, from its editorial: "The pro-

20 posed Constitution also eliminates an existing ban on

21 the running of state lotteries and if the draft is

1 approved, every voter in Rhode Island can expect to see
2 a dozen different bills before the legislature as soon
3 as possible to put the state into the gambling business
4 in spite of the unhappy experiences of New York and New
5 Hampshire."
6 Then they went on to say in the editorial, and
7 I quote, "With reluctance but with firm conviction the
8 Journal Bulletin recommends rejection of the proposed new
9 State Constitution at the special election, November 7.
10 "The good in the draft, and there is much that is
11 good, that is very good, is outweighed by the bad."
12 Then the power of this giant known as the pub-
13 lic began to make itself felt and so Governor Chaffee
14 of the state of Rhode Island likewise said that the
15 greatest concern that he has in this proposed Consti-
16 tution of Rhode Island is this subject of lotteries
17 and the subject of wire tapping.
18 On November the 6, 1967, they withdrew the en-
19 tire proposal from the people, rather than face complete
20 defeat.
21 Now, I think you have a right to ask me this

1 question: Suppose this particular proposal of our
2 committee's is defeated? What would you do?
3 My answer to you is very simple. I have been
4 working so far as this Constitution is concerned since
5 1930. My first published article was on October 30, 1930.
6 That is a long time ago.
7 I will take the good with the bad and wherever
8 I am invited, I will be there trying to put over all of
9 the whole proposal, but I ask you this now in advance:
10 Ought you to put this kind of a lead burden on this Con-
11 stitution by taking out what has been in every Constitu-
12 tion of Maryland, by failing to profit by the experience of
13 Rhode Island, by being unwilling to believe what has happened
14 in other areas where it has failed to financially relate
15 and where as it has in England, these persons who predict
16 that it won't do anything about the corruption and the
17 present gambling which is unlawful, but that it will
18 bring within itself worse evils -- these are the situations
19 for you to consider, and we hope most earnestly that you
20 will vote for our recommendation, which is a vote to
21 keep the restriction, the restraint on lotteries in the

1 Constitution.

2 THE CHAIRMAN: Are there any questions of the

3 committee Chairman for purposes of clarification?

4 Delegate Scanlan?

5 DELEGATE SCANLAN: Judge Sherbow, apart from

6 the extension of the present Constitutional prohibition to

7 the political subdivisions whereas in the present Consti-

8 tution it applies to the General Assembly only, is there

9 any intention on the part of your committee to broaden

10 the prohibition against lotteries?

11 For example, the present prohibition says "no

12 lottery grant shall ever hereafter be authorized by the

13 General Assembly."

14 Your suggested language says "lotteries shall

15 not be sanctioned by the state", leave aside the political

16 subdivisions, I understand your point there.

17 Is it your intention by the language suggested

18 in there to broaden the concept of the lotteries? For

19 example, a lottery grant to my mind indicates the state

20 granting permission to hold a lottery, whereas your

21 language says no lotteries shall be sanctioned.

1 That could be read by some minds to encompass
2 a broader scope, that any type of lottery in the state
3 whether held by a private group or religious group or
4 any other kind would be barred by your language, whereas
5 the reading of the present Constitution at least in one
6 case, would indicate it refers to an actual grant of
7 permission to hold a lottery.
8 Is there any intention to broaden the defini-
9 tion?
10 THE CHAIRMAN: Delegate Sherbow?
11 DELEGATE SHERBOW: Delegate Scanlan, all that
12 we attempt to do is to adopt what the present Maryland
13 law is but the point you raise was covered by an
14 opinion of Attorney General Herbert R. O'Conor in 1935,
15 where he held that the present Constitutional prohibition
16 against lottery prohibits a state lottery, that means that
17 the lottery couldn't be authorized by giving authority to do
18 so to some group like they did in the olden days,
19 it also means the state couldn't operate its own lottery
20 and what we are attempting to do is to encompass the
21 situation as it exists today.

1 THE CHAIRMAN: Delegate Scanlan.

2 DELEGATE SCANLAN: Then your answer is, Judge
3 Sherbow, that you are not trying to broaden the scope
4 of the prohibition?

5 THE CHAIRMAN: Delegate Sherbow.

6 DELEGATE SHERBOW: Not at all, except we do
7 want to make sure that the language shall not authorize
8 a grant, also it prevents the state itself from engaging in
9 a lottery.

10 THE CHAIRMAN: Delegate Scanlan.

11 DELEGATE SCANLAN: You confuse me there, Judge
12 Sherbow, it prohibits the state itself from engaging in
13 a lottery and it prohibits the state itself from authori-
14 zing a lottery by being conducted by private people?

15 THE CHAIRMAN: Delegate Sherbow.

16 DELEGATE SHERBOW: That's right.

17 THE CHAIRMAN: Delegate Scanlan.

18 DELEGATE SCANLAN: There is no change in the
19 interpretation?

20 THE CHAIRMAN: Delegate Sherbow.

21 DELEGATE SHERBOW: None whatever.

1 THE CHAIRMAN: Delegate Scanlan.

2 DELEGATE SCANLAN: I have another question.

3 You are aware of a case that has been argued
4 in the Court of Appeals where a point has been raised that
5 the present prohibition against lottery prohibits Anne
6 Arundel County from authorizing bingo within the county.

7 Should the Court of Appeals agree with that con-
8 tention, is it the intention of the language proposed by
9 your committee that bingo conducted by private groups under
10 a specific authorization of a county such as Anne Arundel
11 would be barred by the prohibition that you now lay before
12 the assembly?

13 THE CHAIRMAN: Delegate Scanlan.

14 DELEGATE SCANLAN: No, actually they operate here
15 by reason of a state statute, which took bingo, as I
16 understand it, out of any prohibition and what happens
17 after that -- I don't know. Judge Evans was correct in
18 the lower court. If the Court of Appeals should hold that
19 bingo is a lottery, our view is that it is not to be
20 prohibited under the terms of the 12 words that we are
21 using.

1 In other words, bingo is not to be prevented
2 from operating if our restraint remains in the Consti-
3 tution and, assuming, of course, that the legislature
4 permits it.
5 THE CHAIRMAN: Delegate Scanlan, do you have
6 a further question?
7 DELEGATE SCANLAN: I do, Mr. Chairman.
8 Did your committee give any thought to attempting
9 to define lottery?
10 DELEGATE SHERBOW:No, we felt that it has obtained
11 in Maryland whatever was needed,by reason of a series
12 of attorney general opinions, by these decisions,and that
13 if we were to attempt to define it,by that very effort,
14 we would find that outside of the language that was used
15 would be the loopholes by which it could be operated.
16 We are accepting the meaning as it is now gen-
17 erally understood.
18 THE CHAIRMAN: Delegate Scanlan.
19 DELEGATE SCANLAN: If, though, the Court of
20 Appeals should define bingo to fall within the definition
21 of lottery, am I clear in my understanding that your

1 proposition would not go that far? That you would agree
2 with the lower court's decision in the case to which we
3 both referred?
4 THE CHAIRMAN: Delegate Sherbow.
5 DELEGATE SHERBOW: Yes, indeed.
6 THE CHAIRMAN: Delegate Scanlan.
7 DELEGATE SCANLAN: Then it is perfectly clear
8 that this proposal means not to include bingo within the
9 definition of lottery, sir?
10 THE CHAIRMAN: Delegate Sherbow.
11 DELEGATE SHERBOW: Bingo as we now understand
12 it.
13 THE CHAIRMAN: Are there any further questions?
14 Delegate Johnson.
15 DELEGATE JOHNSON: Delegate Sherbow, you spoke
16 of a period in Maryland's history when lotteries were
17 held in an unsatisfactory and improper manner. When was that
18 period?
19 THE CHAIRMAN: Delegate Sherbow.
20 DELEGATE SHERBOW: That whole history goes
21 back to the days up until the middle 1820's and then

1 continued until the legislature could finally extricate
2 itself from what had developed.
3 THE CHAIRMAN: Delegate Johnson.
4 DELEGATE JOHNSON: Delegate Sherbow, you also
5 indicated that you had some fear of the local subdivisions
6 possibly taking advantage if we removed the prohibition,
7 but don't you anticipate as many of us do that the legis-
8 lature will very likely go into special session immediate-
9 ly after the adoption of this Constitution and at that
10 time they could take such steps as may be necessary to
11 prohibit the local subdivisions from carrying out a lot-
12 tery in there?
13 THE CHAIRMAN: Delegate Sherbow.
14 DELEGATE SHERBOW: Well, my answer, Delegate
15 Johnson, is simply this. The legislature may decide no.
16 What is good for a state to run may be good for a city or
17 county and why not do it?
18 I can give you one example of this actually
19 occurring, it frightens me when I think of it, but there
20 were some of us who were quite eager to provide some
21 money for the poor during the depths of the depression

1 in 1935 and 1936. All the tax proposals were turned down
2 by the General Assembly. On the last night they passed
3 by a widest vote the laws restricting gambling restric-
4 tions. Within a few days the gamblers had come to Bal-
5 timore from many big cities and were hiring the Palace
6 Theater; when that hit the public knowledge, I think
7 then the public woke up.
8 I think the reaction was just like a cannon
9 boom in this room and within less than ten days Governor
10 Nice vetoed that bill, the legislature passed it the last
11 minute, Governor Nice vetoed it and I think thereafter
12 we had other taxes to take its place.
13 All I can say to you is that the legislature
14 may not act the way you think they may, and this is possi-
15 ble.
16 THE CHAIRMAN: Delegate Johnson.
17 DELEGATE JOHNSON: You don't mean to imply that
18 the members of the underworld, the Mafia, as you put it,
19 are currently lobbying to eliminate the prohibition of
20 the lottery from our Constitution?
21 THE CHAIRMAN: Delegate Sherbow.

1 DELEGATE SHERBOW: No,I wouldn't say that, but
2 I will tell you what I will predict, that if you do
3 eliminate the prohibition by whatever name they are called,
4 and I don't know what is the correct name for them,within
5 less than the next ten or 15 years, you could write the
6 article about England and just change the name, because
7 and here again you have touched me where I know -- 1949,
8 1950, 1951 and 1952, I think I knew about as much as there
9 was to know sitting where I did in criminal court about
10 the corruption that came and we -- when I was there
11 almost reached up to the top until the Supreme Court
12 granted it -- well, anyway the top man got out.
13 I am saying to you, it does happen. It
14 can happen. I am not a prophet of doom as I repeat, but
15 it could happen here. I hope it never does. I hope we
16 don't give them the chance.
17 THE CHAIRMAN: Any other questions? Delegate
18 Gleason?
19 DELEGATE GLEASON: I am a little bit disturbed
20 by your answers to Delegate Scanlan's question and I
21 wonder if I could explore it.

1 As I understand it, the committee did not
2 attempt to define what was or what was not a lottery,
3 is that correct?
4 DELEGATE SHERBOW: That is correct.
5 THE CHAIRMAN: Delegate Gleason.
6 DELEGATE GLEASON: Did the committee attempt
7 to put an implication of what was a lottery to the extent
8 that its implication, keeping in mind, of course, that
9 we have to put the prohibition in positively, that that
10 implication could be impressed upon the Court of Appeals
11 so that their decision would be reversed with respect to
12 the bingo?
13 THE CHAIRMAN: Delegate Sherbow.
14 DELEGATE SHERBOW: Yes, the way in which
15 we sought to do it very simply was this: the lotteries that
16 we were hoping would have the restraint by Constitutional
17 actions or lotteries as we understood them, those that
18 had been in operation in Maryland in the days before
19 the Constitution said no more, lotteries as they operate
20 them today in New Hampshire, lotteries as they operate
21 them today in the state of New York.

1 We have before us, and I would like the record
2 to show, we have before us the opinion of the attorney
3 general in 1935 which held that the state not only could
4 not grant -- could give a lottery grant, but likewise the
5 state itself could not engage in lottery.
6 We accepted that as a law. We have before us a
7 discussion of the subject of the church bingo and it was
8 perfectly clear to us, and I repeat it for the record,
9 we were making no effort whatsoever to include bingo as
10 it is presently operated in Maryland within any lottery
11 ban.
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1 THE CHAIRMAN: Delegate Gleason.

2 DELEGATE GLEASON: Delegate Sherbow, it is
3 not that aspect of it that bothers me. It is the
4 reverse of that conclusion.

5 The reverse is I take it you made a positive
6 effort to have it excluded and that's the thing that
7 bothers me.

8 DELEGATE SHERBOW: Have what excluded?

9 DELEGATE GLEASON: Bingo.

10 DELEGATE SHERBOW: No, just the opposite,
11 we exclude bingo from the definition of lottery. We
12 are not excluding bingo from operating. If the legislature
13 chooses in its wisdom to keep bingo within the present
14 statute, we want this prohibition against lottery not
15 to affect it.

16 THE CHAIRMAN: Delegate Sherbow, I think you
17 misunderstood Delegate Gleason's question. I think he
18 meant was your positive intention to exclude bingo from
19 being within the purview of the word lottery. Is that
20 your question, Delegate Gleason?

21 DELEGATE SHERBOW: That is correct.

1 THE CHAIRMAN: Further question, Delegate
2 Gleason?
3 DELEGATE SHERBOW: That has been so upheld.
4 DELEGATE GLEASON: Don't you think we are
5 getting on fairly dangerous ground here in attempting to
6 in effect foreclose a judicial decision as to what
7 a lottery is and is not by your discussion within the
8 committee that bingo should be excluded from a lottery?
9 Suppose the state put on or authorized a bingo contest
10 throughout the state. I take it by your definition that
11 would not be a lottery.
12 DELEGATE SHERBOW: What I am saying to you,
13 Delegate Gleason, is simply this. That our definition of
14 lottery is lottery as it is generally understood. We
15 have before us two opinions. One by Judge Sachs of this
16 county, the other by Judge Evans of this county, each in
17 this particular case holding that bingo was not by
18 definition lottery.
19 So far as we were concerned, we were accepting
20 that definition. Bingo is not lottery. Now there is
21 pending on appeal in the Court of Appeals that same

1 question. If the Court of Appeals should decide that
2 bingo is lottery, then, of course, this is another
3 situation. All we are attempting to do is say by
4 definition we do not include bingo in our minds with
5 lottery.
6 THE CHAIRMAN: Delegate Gleason.
7 DELEGATE GLEASON: It is precisely the Court
8 of Appeals decision that is bothering me with respect
9 to your comment because if by your comment it can be
10 impressed upon the Court of Appeals the Constitutional
11 Convention Drafters have excluded this from thedefinition
12 it coerces their decision. We would be on safe ground,
13 I think, if we leave it at what it has traditionally been
14 and leave the word stand for whatever it is interpreted by
15 the courts.
16 DELEGATE SHERBOW: I would ask what were the
17 discussions before us, what were their intentions?
18 Delegate Gleason, after, Isuppose, almost a lifetime in
19 the courts and at the Bar, I can assure you there isn't
20 anything you or I are going to say that will coerce the
21 Court of Appeals in any decision it will make. It will

1 make it not on what we say or do here but on the briefs and
2 records in the case then before that. That case presents
3 a very narrow issue. I don't want to discuss the case
4 but they may never get to this particular point in that
5 particular case.

6 THE CHAIRMAN: Delegate Gleason.

7 DELEGATE GLEASON: The point I make is that we
8 here are going to decide on recommendation of your
9 committee, we are going to base our decision, I presume,
10 on the basis of the meaning of those words that you
11 say that word has. That's why I think we have got to be
12 extremely careful as to what that meaning really is
13 because that will have an effect on court decisions.

14 DELEGATE SHERBOW: I can't answer you as to
15 what court decisions may be because by the time this
16 Constitution is presented to the people next May, that
17 will already have been decided. Lotteries are lotteries
18 as the definition generally is understood. You asked what
19 the individual views of members would be. All Ican say to
20 you is it was our consensus that bingo as now presently
21 played is not a part of the lotteries as are generally
understood to it.

1 THE CHAIRMAN: Delegate Mosner.

2 DELEGATE MOSNER: Judge Sherbow, wasn't most of the
3 information you gave here this afternoon available to
4 the Eney Commission? If so, why do you think they voted
5 overwilmingly to delete it from the Constitution?

6 DELEGATE SHERBOW: Obviously not because this
7 case arose long after the Eney Commission had adjourned
8 and published its report. It is a case growing up in
9 Anne Arundel County. If the case had started prior to
10 that, I doubt very much if they had it.

11 But the Eney Commission was very, very careful
12 in its report to point this out. That it was not saying
13 lottery was good or bad. It simply had concluded that
14 they were not going to put this into the Constitution.

15 THE CHAIRMAN: Delegate Cardin.

16 DELEGATE CARDIN: Delegate Sherbow, I wonder
17 if you would define for me lottery in a different sense.
18 The gasoline and food store lotteries as I would term
19 them obviously are a give away. And is chance that you
20 gamble that you will get the second half or the duplicate
21 of something for which you are looking. Is that a lottery?

1 DELEGATE SHERBOW: No, that is not a lottery
2 but for a totally different reason. The give-aways at
3 the gasoline stations are on a totally different ground.
4 There you, the individual, give nothing. You don't buy
5 a lottery ticket. You give up nothing of value. You
6 don't even make a factsimile. You don't do anything
7 except go to a place where they give you something in
8 the nature of a ticket. You are not even required to
9 buy anything. Therefore, these distinctions occur. One,
10 they may cross state lines. It doesn't violate the
11 Federal laws. You couldn't take a lottery ticket across
12 the state lines. You couldn't have them given publicity
13 by radio and television because they would then be
14 violating Federal laws. These are items which are
15 totally different. Just like when you are lucky enough
16 to catch the home run hitter at a ball game and happen to
17 have his name picked simply out of a hat. You have given
18 up nothing of value. You haven't even bought anything. You
19 haven't put down any money. In lottery, you give up the
20 money on the chance that you may be one who will obtain
21 something. That is the distinction.

1 The Federal Government has gone a step further
2 since you remind me of it. They are now in the process
3 of passing through the Senate and House, it has already
4 passed one, ready for the other, a prohibition against
5 Federal banks even selling these lottery tickets because
6 they consider them of that nature.
7 THE CHAIRMAN: Delegate Cardin.
8 DELEGATE CARDIN: Then the chief distinction
9 is in order for it to be lottery there must be purchase
10 by the individual.
11 DELEGATE SHERBOW: Or giving of something of
12 value. It doesn't have to be a purchase. If you said
13 to me I have to before I could participate in your give-
14 away, I had to actually do something which required me
15 to give up something of value, even if it is a purchase,
16 that would be invalid.
17 All I could, to make it legal, you have to
18 give me something which is completely for nothing. Saying
19 I come to your gas station you hand me the ticket, you
20 can't make me buy gas.
21 THE CHAIRMAN: Delegate Cardin.

1 DELEGATE CARDIN: One last question. Is there
2 any possibility of a change in opinion, a judicial opinion,
3 of the definition of lottery.
4 DELEGATE SHERBOW: Well, if you ask me what
5 are the courts going to do at any given time, I could
6 never answer you. I can only say the greatest saving
7 grace in American life is the fact in our Constitution
8 we have little words like interstate commerce and over
9 150 years there have been 250 decisions defining that
10 because, as the country grew, we changed.
11 I can't tell what will ever be a decision
12 because 50 years from now as a result of computers and a
13 totally new kind of civilization, somebody is going to
14 think of something that I never dreamed. Even in a
15 nightmare.
16 THE CHAIRMAN: Delegate Kosakowski.
17 DELEGATE KOSAKOWSKI: Delegate Sherbow, to
18 pursue Delegate Gleason's remarks in reference to the
19 definition of a lottery, I know you are a learned lawyer,
20 very good judge, you have had a lot of experience in this
21 matter.

1 When the case goes before the Court of Appeals,
2 do these judges define words by looking the words up
3 in the dictionary? Do they define words from past
4 experiences in an area? How do they arrive at defining
5 something? What process do they take? Being a layman, I
6 don't understand that. Maybe you could explain this to
7 me.
8 DELEGATE SHERBOW: What happens, Delegate
9 Kosakowski, is this. When you are dealing with something
10 like lottery, you give it its general meaning. When
11 somebody comes up with something that is a little different
12 and you now have to face another set of facts, then you go
13 back and you look at the history of the entire subject.
14 Then you go further and you go to the debates either in
15 the Legislature or in Congress or before the Constitutional
16 Convention. You want to find out what did those people
17 think it meant? You look for the contemporaneous construction.
18 Then out of all of this distillation of arguments on all
19 sides, if it becomes necessary to define the particular
20 matter, the courts will define them.
21 If they feel that all they have to do is to

1 decide whether what is before them comes within it or
2 not, they may say we rule that this is or is not within
3 this statute. We go no further.
4 They don't have to decide a whole lot more than
5 just the simple issue of the case before them.
6 THE CHAIRMAN: Delegate Kosakowski.
7 DELEGATE KOSAKOWSKI: Delegate Sherbow, did
8 your committee get the dictionary and look at the
9 definition of a lottery?
10 DELEGATE SHERBOW: I don't know that there
11 are about a dozen dictionaries of outstanding substance.
12 All I know is we are dealing with a legal definition.
13 You are going to find out later in reading as we will
14 of some pages dealing with the matters relating to taxation,
15 that words have special meaning. Words of art. They deal
16 with a special subject. They have acquired this particular
17 meaning. The lottery, as we understand it, has acquired these
18 meanings.
19 There is another statement in the law which
20 says if you allow something to go on for a long, long
21 time and people have accepted that particular definition,

1 you have to give considerable weight to it.

2 THE CHAIRMAN: Delegate Kosakowski,

3 DELEGATE KOSAKOWSKI: Delegate Sherbow, going

4 back to a statement you made relating to horse racing

5 compared to lotteries, did you make the statement horse

6 racing and lottery was controlled by the State of Maryland?

7 DELEGATE SHERBOW: No, I said not that lottery

8 was controlled, said lottery was banned by the State of

9 Maryland, but that horse racing insofar as pari-mutuel

10 betting is concerned is under the control of the State of

11 Maryland and is not construed as a lottery they couldn't

12 operate if it was construed as a lottery.

13 THE CHAIRMAN: Delegate Kosakowski.

14 DELEGATE KOSAKOWSKI: If the ban on lottery

15 were taken out of the Constitution and the State of

16 Maryland approved the lottery, do you think with a state-

17 operated lottery, do you think the racketeers would muscle

18 in?

19 DELEGATE SHERBOW: I don't think there is the

20 slightest doubt of it, I think they would muscle in, and I

21 would be willing to predict almost the period of time it

1 would take them to come in. It would be less than ten
2 years.
3 THE CHAIRMAN: Delegate Weidemeyer.
4 DELEGATE WEIDEMEYER: Mr.Chairman, I notice
5 that in your report it dwelt at considerable length on
6 the fact that lotteries were bad and should be banned
7 because, as you have indicated by your talk here today
8 and also by the report that it meant paying in some money
9 on the theory of getting a large return or something for
10 nothing.
11 I am wondering with that in mind did your committee
12 give any special thought to jai alai? Did it give any
13 special thought to dog racing? Or bookmaking or pinball
14 machines that pay off or horse race betting or off track
15 betting or free play machines with payoffs or with daily
16 doubles or with quinnella or with numbers operations or
17 50-50, raffles of clothes and turkeys and bingo and also
18 grab prize machines and any number of other things that
19 we in Maryland have not considered evil?
20 THE CHAIRMAN: Delegate Sherbow.
21 DELEGATE SHERBOW: If you are asking me did the

1 committee consider all of those things, I must say that
2 I can't speak for what the rest of the committee did but
3 on some of those items, I know we talked about them. We
4 resolved that what we were dealing with was the issue of
5 lottery, not the other issues.
6 THE CHAIRMAN: Delegate Weidemeyer.
7 DELEGATE WEIDEMEYER: I can understand where
8 if a man goes to church and wants to get salvation
9 without paying anything into the plate, he might get
10 something for nothing. But I cannot understand the
11 position of the committee. Did your committee also give
12 consideration to the fact that if a referendum provision
13 were such that the people could take a bill out on
14 referendum and the people of Maryland did not want anything
15 passed by the Legislature, the referendum provisions were
16 liberalized enough they could easily vote on it and
17 determine that issue.
18 DELEGATE SHERBOW: Yes, we considered that
19 because we had before us the referendum of 1938 where
20 there was presented to the people of Maryland the question
21 whether this provision should be taken out of the

1 Constitution and the people voted 123,365 to let the
2 restriction stay in, to 90,850, to take it -- what I
3 am trying to say is they lost the vote to take it out of
4 the Constitution.
5 THE CHAIRMAN: Delegate Weidemeyer.
6 DELEGATE WEIDEMEYER: Delegate Sherbow, I
7 notice you read from the Washington Post but did you
8 read from the Washington Post on November 26, 1967?
9 DELEGATE SHERBOW: If I did, I don't recall.
10 DELEGATE WEIDEMEYER: Mr. Landau, Commissioner
11 of the State Lottery of Israel, said Israel, a small
12 state, made 13 million out of theirs and only reason
13 New Hampshire and New York were not making money out of
14 it was they didn't know how to run it. (Laughter.)
15 DELEGATE SHERBOW: All I can say is on behalf
16 of the little State of Israel, that's not the only thing
17 they think they know how to do. They have been right
18 successful lately.
19 THE CHAIRMAN: Delegate Weidemeyer.
20 DELEGATE WEIDEMEYER: Wouldn't you consider them
21 good businessmen? (Laughter.)

1 DELEGATE SHERBOW: I would say this. That
2 when it comes to preserving one's homeland, when it
3 comes to preserving one's life from overwhelming odds, when
4 everybody rises up to defend, they are without question
5 completely successful.
6 Whether or not they are good or bad businessmen,
7 the world will have to judge by reason of the fact that a
8 large overwhelming portion of what they need for survival
9 plus come from outside that same little state.
10 THE CHAIRMAN: Delegate Weidemeyer, we ought
11 not overlook the fact when they are doing all these good
12 things they have the business acumen to raise the money.
13 DELEGATE SHERBOW: I overlook nothing that I
14 think will establish what I am hoping will be a good
15 Constitution.
16 THE CHAIRMAN: Delegate Koss.
17 DELEGATE KOSS: Delegate Sherbow, I would like
18 to pursue, if I might, your reply to Delegate Cardin.
19 Can I assume from your answer that if you get a bonus
20 ticket of some sort or other from a grocery store or
21 gas station that it is dependent upon your either buying

1 something at the grocery store or gas from the gas station
2 that that indeed is a lottery and would be banned by this
3 language.
4 DELEGATE SHERBOW: I can only say to you
5 what you get is in the nature of not a bonus because I
6 can offer you $10 worth of merchandise and say if you
7 buy $11, I will throw in two extra eggs, that is another
8 story, but if it depends on the wheels of chance operating
9 and in order for you to participate in the results of the
10 wheels of chance, you have to buy something or give up
11 something of value, the answer is that is a lottery.
12 THE CHAIRMAN: Delegate Koss, any further
13 questions? Delegate Mosner.
14 DELEGATE MOSNER: Judge Sherbow, I want to make
15 this statement for the record. I have been informed by
16 one of the delegates that all information you gave us
17 was before the Eney Commission except that which pertains
18 to bingo.
19 DELEGATE SHERBOW: All I can say is that I
20 consider the Eney Draftone of the greatest accomplishments
21 of our time. I also consider that if we were to follow

1 the Eney Draft or the Constitutional Commission Draft
2 blindly without the slightest change, there was no need
3 for us to come here. I also say to you that the
4 President of this Convention in his first address made it
5 perfectly clear that this was to be a guide, a food guide,
6 I think it is an excellent guide but it is not one that
7 is to be rubber stamped.
8 THE CHAIRMAN: Delegate Burdette.
9 DELEGATE BURDETTE: Mr. Chairman, I should
10 like to ask the Chairman of the Committee whether the
11 word "sanction", which appears in his language he is
12 using, means such as permitted or allowed or whether
13 he is using such meaning as conducted directly or indirectly.
14 If I may amplify that, sir, earlier in your
15 conversation,Judge Sherbow, you have given me the impres-
16 sion that you desire on behalf of the Committee to prohibit
17 the state from conducting a lottery either directly or
18 indirectly. In recent remarks I have had the impression
19 that the committee's desired prohibition is that no
20 private citizen in Maryland could conduct anything which
21 might be called a lottery.

1 DELEGATE SHERBOW: Professor, Delegate Burdette,
2 let me take it from the beginning. The word sanction,
3 as used in this particular recommendation, is used in
4 the sense of authorizing. This is the basis that we
5 adopted. A change to authorize we thought would not be
6 objectionable.
7 Under these circumstances we felt that the
8 word "sanction" was preferred as being the stronger of
9 the two terms. The word we used was the word "sanction."
10 But i-'s meaning is in the sense of being authorized.
11 The second part you asked is whether or not
12 this would mean that the state couldn't authorize or
13 sanction a lottery or political subdivision but some
14 individual could go out and do it. The answer is no, the
15 state cannot, the local subdivisions cannot, and that
16 which is a lottery would be prohibited.
17 THE CHAIRMAN: Delegate Burdette.
18 DELEGATE BURDETTE: The Committee then is using
19 the language "sanction" as if it were to say the State
20 of Maryland and its political subdivisions shall not
21 allow a lottery to be conducted in this state.

1 DELEGATE SHERBOW: Or shall not authorize a
2 lottery to be conducted in this state.
3 THE CHAIRMAN: Delegate Burdette.
4 DELEGATE BURDETTE: Perhaps that matter might
5 be an entirely different matter. If the Legislature
6 General Assembly should take no action whatever, would
7 the Chairman of the Committee think that the General
8 Assembly is by that inaction authorizing private citizens
9 to conduct a lottery?
10 DELEGATE SHERBOW: If we take this ban out and
11 the legislature does nothing, I say yes, that would mean
12 that some little town of a thousand inhabitants could
13 proceed with its lottery. Some town with 10,000 inhabitants
14 could proceed with its. The county could. On, on, on.
15 THE CHAIRMAN: Delegate Burdette.
16 DELEGATE BURDETTE: I wasn't speaking to the
17 point of taking the ban out. I was speaking to the point
18 of putting the ban in. And even with the ban in, as
19 I understand your remarks, frankly, I don't understand
20 this point, with the ban in and if the legislature took
21 no action to authorize, would the effect upon private

1 citizens be that private lotteries are banned or not banned.

2 DELEGATE SHERBOW: Professor, I don't under-

3 stand your question because, if the ban is in, the

4 legislature cannot take any action allowing a lottery.

5 THE CHAIRMAN: Delegate Sherbow, maybe the Chair

6 can state Delegate Burdette's question because I don't

7 believe you are answering his specific question. Let me

8 do so with two illustrations.

9 If the ban is in the Constitution as proposed

10 by the committee, and the legislature were to amend the

11 statute prohibiting gambling so as to make it clear that

12 the statutes did not prohibit a lottery, would this

13 constitutional provision nevertheless prohibit a lottery?

14 DELEGATE SHERBOW: The constitutional prohibition

15 would prohibit a lottery. The legislature by its

16 definition would have to determine that what it was passing

17 on was not a lottery. If it is a lottery the legislature

18 can't say we are going to give permission to have a

19 lottery when the constitution says you cannot.

20 THE CHAIRMAN: This is the whole point of the

21 questions of Delegate Scanlan and the impression the

1 Chair had or your answers to those questions was quite
2 the converse of what you are now saying.
3 Let me understand by the further illustration, if
4 I may. If the Legislature were to repeal the gambling
5 statute so there were no prohibition, no statutory
6 prohibition against gambling in Maryland is it your
7 intention that this provision, this constitutional
8 provision, would be self-operative so as to prohibit the
9 operation of a lottery either by a state, a political
10 subdivision, or a private organization or person?
11 DELEGATE SHERBOW: The constitutional prohibition
12 would be effective, would be self-operating. But if the
13 legislature decides as it has that something like bingo
14 is not within the definition of lottery, it has not been
15 defin-d as lottery anywhere that I know of, in Maryland,
16 that that definition still holds.
17 If the Legislature decides to change its
18 decision and say that bingo is prohibited, they don't need
19 a constitutional prohibition to prohibit bingo. They may
20 do it based on whatever they want to do about the gambling
21 statutes.

1 THE CHAIRMAN: Do I understand then that the
2 language of Committee Recommendation SF-2, as drawn
3 and using the words "lotteries shall not be sanctioned"
4 means as Professor Burdette suggested not merely that they
5 not be authorized but that they not be permitted.
6 DELEGATE SHERBOW: That's right.
7 THE CHAIRMAN: Does that answer your question,
8 Delegate Burdette?
9 DELEGATE BURDETTE: Yes, Mr. Chairman, it
10 answers it.
11 THE CHAIRMAN: Delegate Hostetter.
12 DELEGATE HOSTETTER: Chairman Sherbow, in
13 checking the various sources for definitions of lottery
14 and so forth, did you check the United States Post Office
15 Department?
16 DELEGATE SHERBOW: Those are definitions that
17 are legal because there we have some background in that
18 because you run a lottery, you ought to know, you can't
19 send your newspaper through the mails. That's why an
20 advertisement for a bingo game in the newspaper would be
21 permitted to go through the mail. An advertisement about

1 winning an automobile at my gas station, they will let
2 that newspaper go through with that ad in it but say in
3 that ad you got to buy five gallons of gas from me before
4 I give you a chance to win not only will the ad be
5 unacceptable, but if your paper takes it, you won't be
6 able to send it through the mails because the post office
7 will stop you.
8 THE CHAIRMAN: Delegate Hostetter.
9 DELEGATE HOSTETTER: That was my point because
10 bingo has been declared illegal in Elkton, Maryland,
11 we received a notice from the post office if we mention
12 it again, our mailers will not be mailed out, but from the
13 Federal Govertment's standpoint, it is considered definitely
14 a lottery.
15 DELEGATE SHERBOW: I can't answer for the
16 Federal Government, I can only answer for the State of
17 Maryland. We have in the state of Maryland prohibition
18 against lottery grants; we have here in Maryland on the
19 subject of bingo decisions by the Attorneys General and
20 without question they have been operated.
21 Then we have the statute which was passed and

1 under the terms of that statute the manner and method of
2 operation of bingo has been set out.
3 THE CHAIRMAN: Delegate Scanlan.
4 DELEGATE SCANLAN: Delegate Sherbow, I am a
5 little perplexed. Earlier you indicated in response to
6 a question that I put to you that except for the expansion
7 of the constitutional prohibition to the political sub-
8 divisions, basically the prohibition proposed by your
9 committee was the same as the one now in the present
10 Constitution which would bar grants of a lottery that is
11 a lottery conducted by the state or a lottery conducted
12 for the state under the auspices of a private group.
13 Then in response to questions put to you by me
14 and by Delegate Gleason, you indicated that you thought
15 that bingo did not fall within the definition of a lottery.
16 Now I understand that you said in response
17 to a question by Professor Burdette that the language
18 "shall not be sanctioned" means not permitted at all.
19 Therefore, if a court should decide that bingo was a
20 lottery, then under the language proposed by your committee
21 that would be illegal.

1 DELEGATE SHERBOW: All I can say is that up
2 until now all our evidence indicates that bingo is not
3 a lottery. All the law in Maryland indicates that bingo
4 is not a lottery. If the Court of Appeals should change
5 it and add bingo to include it within the meaning of
6 lottery, much as I believe such a decision will not take
7 place, then, of course, you will have to obey the law.
8 THE CHAIRMAN: Delegate Scanlan.
9 DELEGATE SCANLAN: Then under your language
10 should bingo be outlawed by the Court of Appeals, it would
11 be, should bingo be declared to be a lottery by the Court of
12 Appeals, under the old language and under your language, it
13 would be illegal.
14 DELEGATE SHERBOW: Yes, because if the Court of
15 Appeals should decide that what we have been living under
16 for a hundred years, what the Attorney General decided in
17 1935, four Attorneys General, since what the legislature
18 passed, that all of them were wrong and that the definition
19 includes something else we will have to obey that law.
20 THE CHAIRMAN: Delegate Scanlan.
21 DELEGATE SCANLAN: Did your committee give any

consideration about other possibilities of activity that would possibly be included under the definition of lottery? For instance, would a daily double bettor quinnella be regarded as lottery under the language proposed for inclusion in the Constitution?

DELEGATE SHERBOW: We did not consider it because horse racing in theState of Maryland is accepted as legal when operated within the meaning of the statutes which govern horse racing in the State of Maryland. The manner of betting and everything pertaining to betting is governed by either the statute or the rules of the Racing Commission and therefore as far as we were concerned, did not consider that as a part of lottery.

THE CHAIRMAN: Delegate Scanlan.

DELEGATE SCANLAN: Did your committee draw back from attempts to define lottery because of the difficulties in defining the term?

DELEGATE SHERBOW: On the contrary, we felt that lottery, as we understood it, is just what is so simple and which is now being complicated because of the bingo situation. Lotteries, we understand it is the

1 lotteries you read and know about in New York State.
2 Lottery, as we understand it, is the lottery now and read
3 about in New Hampshire. Bingo is something totally
4 different and is not lottery.
5 THE CHAIRMAN: Delegate Scanlan.
6 DELEGATE SCANLAN: It is the definition or the
7 understanding that you just stated in response to my last
8 question, the clear and unequivocal intent of your committee
9 in proposing SF Recommendation No. 2?
10 DELEGATE SHERBOW: Absolutely.
11 THE CHAIRMAN: Delegate Hardwicke.
12 DELEGATE HARDWICKE: Mr. Chairman, I have
13 listened to your statement, I read your report very
14 carefully. It seems to me that the thrust of your
15 prohibitional statement in the Constitution is lotteries
16 are horribly sinful and lead to organized gambling and
17 racketeering.
18 Let me ask you whether or not there are other
19 equally evil things that ought to be constitutionally
20 prohibited.
21 DELEGATE SHERBOW: I can only answer this to

1 you. There are many evils which are the subject of no
2 laws whatsoever. They are matters of morality. They are
3 not in the Constitution, not even in the statutes. This
4 is a matter with one's own conscience.
5 We have here a specific situation, one with which
6 the people of Maryland dealt with well over a century. You
7 now have before you a decision that you have to make.
8 Do you want to follow what has been done or do you want
9 to change it? I say the reasons for not changing it are
10 these. One, that the prohibition against lotteries is
11 good. Secondly, it accomplishes no good to -ake it out.
12 Thirdly, it brings evils of its own along with it.
13 I am not up here to say that we should begin now
14 and statutorily or constitutionally define everything that
15 is evil and proceed to correct it.
16 THE CHAIRMAN: Delegate Hardwicke.
17 DELEGATE HARDWICKE: Then what you are saying
18 is that anything which is evil and which is prohibited by
19 the existing Constitution,that prohibition should be
20 continued into the 1967 Constitution.
21 DELEGATE SHERBOW: Well, I don't know what

1 you mean by that. Everything that is in, if you direct
2 me specifically to what you are talking about, I will answer
3 it. I am saying I am dealing now with one specific matter.
4 THE CHAIRMAN: Delegate Hardwicke.
5 DELEGATE HARDWICKE: The thrust of my question
6 was, what test should we lay down for the prohibition of
7 evils in the Constitution? Your answer was, as I under-
8 stood it, that this prohibition against this evil was
9 in the present Constitution, therefore it should be
10 continued in the next Constitution. That was the only
11 additional test that you gave me for prohibiting evils
12 in the Constitution.
13 DELEGATE SHERBOW: On the contrary, I thought we
14 had emphasized the fact that by this removal it now means
15 that the political subdivisions may engage in this same
16 practice, Ithought we had brought to your attention the
17 fact that in addition to this the evils which follow by
18 reason of what has happened elsewhere are of such a
19 nature that you ought to leave what you have got and keep
20 it.
21 THE CHAIRMAN: Delegate Hardwicke.

1 DELEGATE HARDWICKE: Then I take it that you do
2 not propose any test for constitutionally prohibited evil?
3 DELEGATE SHERBOW: Not I, no.
4 THE CHAIRMAN: Delegate Gleason.
5 DELEGATE GLEASON: I wonder if I could just go
6 over this with you once more, while Mr.Scanlan is in the
7 room, and perhaps will put it to rest for all time.
8 I understood you to say in response to his questions that
9 if the Court of Appeals ruled that bingo in fact was a
10 lottery, that under the recommendation of the committee
11 that would be included within the definition of lottery.
12 DELEGATE SHERBOW: That is true.
13 THE CHAIRMAN: Delegate Gleason.
14 DELEGATE GLEASON: I further understood you
15 to say that it was the committee's intention to that in
16 voting upon this inclusion within the Constitution, that
17 lottery would not include the enterprise known as bingo
18 and it would further definitely exclude the enterprise known
19 as bingo.
20 DELEGATE SHERBOW: The committee answered it, as
21 I understand it, this way. With all the decisions, with

1 all the Attorney General opinion s and with the law as
2 we understood it, bingo was not by definition lottery.
3 Therefore, they did not intend to exclude bingo. But you
4 have asked the question. Suppose by chance or by, anyway,
5 suppose the Court of Appeals does decide that it is
6 lottery. If our proposal includes the word lottery and
7 it is included within it, then bingo would be included.
8 We think not, based on all of the available
9 law which we have.
10 THE CHAIRMAN: Delegate Gleason.
11 DELEGATE GLEASON: Well, Judge Sherbow, this
12 is a very, very important area of thinking. Two days ago
13 on this floor you stood up when the legislative recommend-
14 ation was before this group and you cited a case of the
15 Court of Appeals that had thrown out a very substantial
16 program on the basis that a bill had not been recorded in
17 the journal. In that case, as you will recall, the Court
18 of Appeals resorted to the constitutional debate of 1876.
19 They recited the intention of the discussion that went on
20 with respect to the meaning that was to apply and the
21 validity that was applied to that particular item.

1 The question becomes very important, it seems
2 to me, here. That what do we intend to be included within
3 the term lottery? Because if the courts will rule in the
4 future by resorting in this discussion of the
5 Constitutional Convention on this issue as they have in
6 the past, with respect to the issue that was before us
7 the other day, I would suggest to you, sir, that our inten-
8 tion may have some relevance to their decision and may
9 carry some weight with what to expect. I think it should
10 be very clearly spelled out as to what the meaning of
11 this word is when we vote upon it.
12 DELEGATE SHERBOW: May I come back to what
13 you were talking about with respect to what occurred the
14 other day? I think you ought to know I was the judge who
15 decided that this was a very simple situation. Here was
16 a $50 million bond issue for schools. The Constitution
17 said that on the final roll call there had to be an Ane and
18 Nay vote recorded. Some clerk reached behind him and he
19 took down HB432, when he should have taken down SB432. It
20 was as simple an error as that. When all of the, when the
21 General Assembly had adjourned and the Governor had signed

1 the bill, it then became known that where it should have
2 been HB432 it was SB432 and therefore the recording of the
3 vote didn't reflect that the law had passed.
4 When the matter came before me, it came before
5 me in this posture. State of Maryland couldn't issue the
6 $50million of bonds and so lawyers were employed to test
7 this out. As a judge I said this couldn't be for one
8 very simple reason. Let's get the facts. When we got
9 the facts in the case, it turned out that what did
10 happen was that this error had taken place. Som-body
11 tried to correct one part of it.
12 Therefore, I ruled that the bond issue had been
13 legally passed. But when it got to the Court of Appeals,
14 they said, we don't know whether you had a right to bring
15 in this evidence or not bring it in but we do know this.
16 The Constitution says the Aye andNay vote has to be
17 recorded. The Aye vote in the Senate or the House, I
18 don't know which, is on SB432, not HB432. We are not
19 going any further. That's so. This is the present
20 Constitutional requirement. They threw out the whole bond
21 issue.

1 All that Delegate Case and I and all the rest
2 were trying to say was whatever you put in as a pre-
3 Constitutional requirement to the validity of a law bear in
4 mind that the Court of Appeals can make these decisions
5 based on its interpretation of what took place.
6 That's what it was. I think it is totally
7 irrelevant, Delegate Gleason, to what we are talking about
8 here for only this reason. Bingo is something that we
9 have had in Maryland now for, I dont know how many years.
10 We have a legislative enactment which says this is how
11 you shall operate bingo. That has never been challenged.
12 Only recently somebody raised the point that they ought
13 to get their money back. In the course of that discussion
14 they said this bingo really is a lottery. Two judges in
15 the lower court said no, it is not so. It is now before
16 the Court of Appeals.
17 THE CHAIRMAN: Delegate Gleason.
18 DELEGATE GLEASON: I would suggest to you, sir,
19 that your recital of the facts of the case did not go far
20 enough. If you recall the opinion of the Court of Appeals
21 of which the presiding officer was good enough to send a

1 copy to me, he mentioned that time had reference to the
2 fact a deliberate attempt was made in that Convention to
3 overturn that requirement and that was turned down.
4 The Court of Appeals put a particular emphasis on this
5 act.
6 What I am suggesting to you is that if we here,
7 in deciding upon the inclusion of this particular recommenda-
8 tion of the majority of the committee, state positively
9 that within our vote lotteries shall not include bingo,
10 that is a substantive part of the action as it goes for-
11 ward, then it could have some weight on the Circuit Court
12 in the future. This is why I want to get it clear.
13 DELEGATE SHERBOW: I can't make it any clearer
14 than this. We on the committee did not, on it, intend
15 that lottery should include bingo. We did intend that
16 lottery shall not include bingo.
17 THE CHAIRMAN: Delegate Gleason.
18 DELEGATE GLEASON: I am sorry to hear that, sir.
19 THE CHAIRMAN: Delegate Weidemeyer.
20 DELEGATE WEIDEMEYER: Mr. Chairman, inasmuch
21 as you have told us here time and time again that the Court

of Appeals might construe lottery as one thing and at another time it would not construe it as a lottery, and that we do not know what the future holds, isn't it true that what your proposal really means is that lotteries shall not be sanctioned by the state, acquiesced in by the state, or its political subdivisions except by rule of court or opinion of the Attorney General?

DELEGATE SHERBOW: No, that is not what I suggest.

THE CHAIRMAN: Delegate Raley.

DELEGATE RALEY: Judge Sherbow, would you have any objection to substituting for the committee's report on lotteries the language that is in the old Constitution? This seems that this may be the answer to all the questions that have been raised because whatever is in the old Constitution has already been tested by law. Would you answer that, Judge, please.

DELEGATE SHERBOW: I can only answer this way, Delegate Raley, that the old Constitutional provision was no lottery grant shall ever hearafter be authorized by the General Assembly. It would not be applicable

1 today because of the provisions relating to the local
2 governments. We are now in position where you couldn't
3 write it that way. Of course, if the opinion of the
4 Attorney General is accepted that lottery grant means
5 what he decided that it was, then insofar as the state
6 is concerned, this would be applicable.
7 But as to political subdivisions this wouldn't be enough.
8 They would have the right to operate their own lotteries.
9 THE CHAIRMAN: Delegate Bamberger.
10 DELEGATE BAMBERGER: Mr. Chairman, do I under-
11 stand that it is the intention of your committee that if
12 the State of Maryland decided that it wanted to raise
13 some revenue by the operation of a statewide bingo game,
14 it could do so.
15 DELEGATE SHERBOW: All I am saying to you is that
16 as of the present time, if the State of Maryland were
17 to decide that it wanted to operate a statewide bingo
18 game, it would not be prohibited by the present provisions
19 of the State Constitution.
20 THE CHAIRMAN: Delegate Bamberger, I suggest to
21 you we have confused judicial interpretations of statutes

1 which prohibit particular types of gambling or
2 regulate particular types of gambling and a prohibition
3 against the state or as the Committee suggests any
4 politic al subdivision financing itself by gamling.
5 I take it the answer to my question would have
6 to be yes, that the state, what you are saying despite
7 the committee report, which seems to me to be directed
8 toward not the evil of gambling in general, but the evil
9 of a political body gaining its revenue by gambling.
10 DELEGATE SHERBOW: Not by gambling. The evil
11 is by lottery.
12 DELEGATE BAMBERGER: I will amend my question --
13 by lottery.
14 THE CHAIRMAN: Delegate Lloyd Taylor.
15 DELEGATE LLOYD TAYLOR: Judge Sherbow, I am
16 trying to understand your argument fully for constitutional
17 ban on statewide, state-sponsored lotteries. Are you
18 saying that a state-sponsored lottery would create more
19 problems than it would solve? What I mean by this you
20 are saying it would give the feeling among some people
21 that financial problems of the state can be solved by a

1 lottery and it might promote a bad feeling among the poor
2 that well, I may have a chance to win a thousand dollars
3 and so, therefore, it would create an attitude that might
4 add to the welfare problems of the state? Is this one
5 of your arguments?
6 DELEGATE SHERBOW: This is a part of the
7 argyment, Delegate Taylor. You will find that expressed
8 a lot better than I could say it by many people who have
9 said that it preys the most on the poor because the state
10 then, instead of facing up to its obligations to provide
11 for the poor by taxation in the proper way, also gives
12 the poor the idea that they are going to get something
13 when actually they are the ones who pay out the most,
14 get the least, and then when it all finally winds up, they
15 are the ones who have gotten the worst end of that stick,
16 yes.
17 THE CHAIRMAN: Delegate Lloyd Taylor.
18 DELEGATE LLOYD TAYLOR: Has the State-
19 sponsored lottery in New York alleviated any financial
20 problems of the state?
21 DELEGATE SHERBOW: I can answer it only this

1 way. It was supposed to be used to help the New York,State
2 of New York with its problem with respect to the amount of
3 money that would be raised for schools. As it turned out,
4 it also provided that part of that was to go to New York
5 City. As it turned out, the amount of money they got from
6 the lottery for the state was so far below what they had
7 expected and the amount they got for New York City was
8 so far below what they had expected, that it accomplished
9 none of the purposes for which it had been originally
10 planned.

11 THE CHAIRMAN: Delegate Lloyd Taylor, do you have
12 further questions?

13 DELEGATE LLOYD TAYLOR: Would you say a state-
14 sponsored lottery would help curb gambling or betting
15 by citizens of the state, help curb illegal gambling?

16 DELEGATE SHERBOW: It does not help to curb illegal
17 gambling, it does not help to curb crime. It breeds
18 them both. This has been the experience elsewhere. So
19 far as any attempt that is made to have lottery stamp out,
20 have this kind of lottery stamp out the numbers racket, I
21 can't give you any statistics on it. You will never be

1 able to stamp out those kinds of rackets except by law
2 enforcement. Nothing else will do it.
3 THE CHAIRMAN: Delegate Lloyd Taylor.
4 DELEGATE LLOYD TAYLOR: On the other side of
5 the coin, did you give any consideration to the psychological
6 effect of having the constitutional ban on lottery,
7 state-sponsored lottery? I mean, say, for instance
8 sometimes when you ban one activity, that may result in
9 increase of activity, for instance, in the case of
10 prohibition against liquor and, say, for instance, we
11 find in some countries where we have certain types of
12 practices outlawed like prostitution, say narcotics addicts
13 and abortion, you still have a great amount of abortion
14 and prostitution and dope addiction in many of these
15 countries where these activities are outlawed.
16 DELEGATE SHERBOW: Insofar as lottery is
17 concerned, we have had well over a hundred or one hundred
18 fifty years ban in the Constitution. We have had no
19 state lotteries, we have had nothing on any large scale.
20 The only time we had anything on what almost grew to be a
21 very large scale was when there was a lottery in Baltimore

1 City offered by an organization that it was so big and
2 so blatant that they offered a great big automobile on
3 one of the main streets and they were indicted and
4 the matter afterwards either didn't come to trial or was
5 dropped when they gave all the money back.
6 It is not like the crimes you speak of.
7 Those are crimes that can only be stamped out by law
8 enforcement. If you want to stop any dope addiction, I
9 can tell you just from the little experience I have had
10 the way to do it is to stamp out the traffic. The way
11 to stamp out the traffic is get to the source. The
12 police have to be able to do it. That's a totally
13 different picture. If this were so, then what's the use
14 of saying the Ten Commandments are there, thou shalt not,
15 this is what you mean, not what I mean. All I can say
16 is it is totally different from those kinds of situations.
17 THE CHAIRMAN: Any further questions? Delegate
18 Lloyd Taylor.
19 DELEGATE LLOYD TAYLOR: One final question.
20 Do you say that if the state entered into this type
21 activity it would give the state really a bad reputation

1 and also add more special problems of the state. This
2 is what you are really saying.
3 DELEGATE SHERBOW: Without question, I think
4 that is so.
5 THE CHAIRMAN: Any further questions of the
6 committee chairmen for purpose of clarification? Delegate
7 Harry Taylor.
8 DELEGATE HARRY TAYLOR: Judge Sherbow, I have a
9 question here. In Southern Maryland where I live, bingo
10 is very popular among some of our churches there. In
11 fact, so much so, the congregation on bingo night is
12 usually a lot larger than it is at Sunday morning services.
13 We also have fire departments that depend to a great
14 extent on bingo to supplement the income they get from
15 the county and the state. I am worried and I think many
16 here are now although you made the intent of your committee
17 very clear that somehow the Court of Appeals or someone
18 else is going to say that bingo is a lottery and we are
19 going to be in trouble on this provision.
20 I don't know whether Style and Drafting can do
21 anything about this, but I think what we want is for this

1 provision to say we don't want lotteries but this doesn't
2 include bingo.
3 It may be that the simple answer to it, I ask
4 you this question, you say the present provision says that
5 the General Assembly may not grant. If we make an amend-
6 ment to that and say or any local subdivision shall not
7 grant, we might be able to solve the problem and make this
8 absolutely clear and get to a vote.
9 DELEGATE SHERBOW: Are you suggesting, Delegate
10 Taylor, that instead of the present proposal that we adopt
11 now literally the present Constitution "no lottery grant
12 shall ever hereafter be authorized by the General Assembly"
13 and add to it "or any political subdivision of the state"?
14 I myself would be willing to accept that. I don't know
15 whether the members of the committee who voted in the
16 affirmative would.
17 THE CHAIRMAN: I take it Delegate Taylor's
18 suggestion would also be satisfied simply by changing the
19 word"sanctioned" in Line 9 to the word "granted," is that
20 correct? Delegate Taylor.
21 DELEGATE HARRY TAYLOR: Yes, Mr.Chairman.

1 DELEGATE SHERBOW: I would accept that
2 definition instead of"lottery shall not be sanctioned",
3 change the words to "lotteries shall not be granted".
4 THE CHAIRMAN: Delegate Harry Taylor.
5 DELEGATE HARRY TAYLOR: I am willing to do
6 whatever I must to see that this is done.
7 DELEGATE SHERBOW: I would ask it --
8 THE CHAIRMAN: This is not the time to offer
9 amendments. You have that opportunity later. You have
10 asked the question and Delegate Sherbow has indicated that
11 at the proper time he would not oppose such amendment.
12 You will have to wait until then.
13 DELEGATE SHERBOW: Mr.Chairman, I have been
14 handed here in answer to some of the questions Page
15 H-8029 of the Congressional Record of the House of June 26,
16 1967, dealing with the question which has been asked
17 by some people as to whether or not the numbers racket is
18 stamped out by lottery.
19 A statement from Mr. Patman. Head line reads:
20 Numbers Racket Flourishes Amid The New York Lottery. I
21 will just read briefly one statement from the New York

1 Times of June 22, 1967. "Betting on numbers is holding
2 its own despite the lottery. We welcome the lottery, a
3 policy gambling operator said yesterday. Numbers players
4 haven't quit us because they now realize our odds are
5 better, we pay off immediately and there is no waiting and
6 furthermore no winner has to worry about paying income
7 taxes." That's from the Congressional Record.
8 THE CHAIRMAN: Delegate Gallagher.
9 DELEGATE GALLAGHER: Judge Sherbow, I believe
10 that sanctioned is a word which is capable of duplicitous
11 definition and I wonder whether or not you would seek some
12 other word besides sanctioned or grant because it would
13 seem to me you want to try to do two things in this
14 particular language. One is you want to disallow the
15 state and its political subdivisions from operating a
16 lottery itself and you want to prohibit them from allowing
17 others to do so, others in the nongovernmental sphere.
18 DELEGATE SHERBOW: Delegate Gallagher, I believe
19 the word"authorized" would be the right word in its place.
20 Then it would read"lottery shall not be authorized by the
21 state or its political subdivisions."

1 THE CHAIRMAN: Delegate Gallagher.

2 DELEGATE GALLAGHER: I just have one other

3 question. What do you believe the odds are against the Court

4 of Appeals declaring bingo to be a lottery. (Laughter.)

5 DELEGATE SHERBOW: I learned long ago the only

6 thing that is safe not to bet on outside of what a court

7 will do is what the Convention will do on a given vote.

8 (Laughter.)

9 THE CHAIRMAN: Any further questions? Delegate

10 Sherbow, before you leave the desk, the Chair is now

11 confused once more by the answers to first Delegate Harry

12 Taylor's questions and then answers to Delegate Gallagher.

13 I had supposed from your answer to Delegate Taylor's

14 questions that you were suggesting that you would not

15 be opposed to a provision with respect to lotteries that

16 would not prohibit private lotteries that would prohibit

17 a lottery being conducted either by the state or its

18 political subdivisions. I take it from your answer to

19 Delegate Gallagher that you were adhering to your prior

20 position that this language should be so drawn regardless

21 of what words are used as to prohibit both public and

1 private lotteries. Can you state clearly which is the
2 proper interpretation?
3 DELEGATE SHERBOW: Our interpretation is
4 lotteries shall not be authorized by the state or its
5 political subdivisions. This means that the state won't
6 have lotteries, political subdivisions won't have
7 lotteries, and private groups can't have lotteries. Our
8 interpretation is bingo is not lottery.
9 THE CHAIRMAN: But if it should be held by
10 the Court of Appeals to be embraced within the meaning of
11 the word lottery, then the effect of this provision would
12 be to prohibit it, is that correct?
13 DELEGATE SHERBOW: I am sorry to say that would
14 be so. I would hate to have that end result. If some-
15 body or any group feels so strongly about this aspect of it,
16 I for one would be perfectly willing to say that the
17 subject of bingo, as we now have it in Maryland, is under
18 sufficient restraint and protection of the present laws
19 that we do not intend to outlaw it by this provision.
20 THE CHAIRMAN: Delegate Fox.
21 DELEGATE FOX: Delegate Sherbow, we now have

1 what I think is substantially the same language in the
2 present Constitution as the language of your committee.
3 We now have permitted in the State of Maryland raffles.
4 These raffles are authorized, as you are aware, by law,
5 some counties they have to get a license for them from the,
6 I started to say Sheriff, but that's amost an improper
7 word. But under the provision of the committee, the
8 recommendation of the committee, am I correct in assuming
9 that the raffles would still be permitted and the same way
10 they are now permitted under the similar language in the
11 present Constitution.
12 DELEGATE SHERBOW: This is what we were not
13 intending to interfere with. We didn't intend to interfere
14 with that.
15 THE CHAIRMAN: Any further questions?
16 Delegate Grant.
17 DELEGATE GRANT: Delegate Sherbow, under the
18 general police powers of the state, as I understand it,
19 the General Assembly could prohibit any form of gambling
20 including horse racing or bingo or anything else, is that
21 correct?

1 DELEGATE SHERBOW: Yes.

2 THE CHAIRMAN: Delegate Grant.

3 DELEGATE GRANT: Would I be correct that if this
4 amendment was passed, the Court of Appeals, by interpreting
5 horse racing, bingo, or any other form of gambling, as a
6 lottery, could certainly prohibit it by declaring it to be
7 unconstitutional.

8 DELEGATE SHERBOW: They haven't, they have the
9 reverse, whatever they have done in the past. That's all
10 I can say, just as they haven't with respect to bingo.

11 THE CHAIRMAN: Delegate Grant.

12 DELEGATE GRANT: I realize that, Judge Sherbow,
13 and I realize what you say here, but despite everything
14 we say here, if such circumstances would appear, anything
15 that the Court of Appeals would define as a lottery,
16 they could then prohibit.

17 DELEGATE SHERBOW: All I can say is that if we
18 were going to stretch the definition to include every
19 conceivable form of gambling when what we are really
20 talking about is lottery, then I have no control over what
21 would take place.

1 THE CHAIRMAN: Delegate Grant.

2 DELEGATE GRANT: However, if there was nothing
3 in the Constitution concerning lottery, then that option
4 would not be open to the court.

5 DELEGATE SHERBOW: No, and there would be nothing
6 to stop the General Assembly from granting all the lottery
7 permits it wanted.

8 THE CHAIRMAN: Delegate Grant.

9 DELEGATE GRANT: In other words, it is the
10 horns of a dilemma either way.

11 DELEGATE SHERBOW: I don't think so, I don't
12 think it is on the horns of a dilemma, I think if you
13 keep what you have, that which was worked and served its
14 purpose avoid the legislature having these problems,
15 I think in the words of Governor Chaffe this is the kind
16 of situation that is bad within a Constitution to take
17 this out. I think the experience shows that is so. Let
18 it stay in, it is all right.

19 THE CHAIRMAN: Delegate Sollins.

20 DELEGATE SOLLINS: Delegate Sherbow, use of
21 this term "political subdivisions" in Line 10 of your

1 recommendation by political subdivision, do you mean to
2 include all the various governmental units as were
3 defined in the Local Government Article such as inter-
4 governmental authorities, civil units, et cetera.
5 DELEGATE SHERBOW: Yes, you see it is a broad
6 inclusion. Of course, some would never have such power
7 any way.
8 THE CHAIRMAN: If there are no further questions,
9 the Chair calls on Delegate Dukes to present the Minority
10 Report. While Delegate Dukes is coming forward to do
11 that, I request the Reading Clerk to read this announcement.
12 MR. QUILLEN: Announcement by Delegate Rush
13 and Delegate Caldwell in behalf of delegates from Baltimore
14 County.
15 Mr. President, ladies and gentlemen of the
16 Convention, it is with deep regret that we announce the
17 death on December 1, 1967, of Howard E. Burkhardt. He
18 was for many years Supervisor of Assessments for Baltimore
19 County, in which position he served the people of
20 Baltimore County with great distinction. Those of us who
21 knew him wish to express our deepest sympathy to his wife

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1 and family.

2 THE CHAIRMAN: Delegate Dukes.

3 DELEGATE DUKES: Mr.Chairman, virtuous delegates,
4 fellow sinners, we, the spokesmen of eagles, salute you.
5 We are happy to have this opportunity ~~to give you an~~
6 ~~opportunity~~ to give you an opportunity to look into the
7 darkness in which we dwelt. As I peer out over the
8 rostrum, into the kindly and wise face of my leader,
9 Chairman Sherbow, and his sagacious colleague, Walter
10 Lewis, we of the Minority are fully aware that the road
11 we tread toward success against such opposition is indeed
12 fraught with adversity and we realize that that we will
13 encounter at every turn both a good deal of scholarship
14 and learning. We are not unaware we are much in the role
15 of Don Quixote as he charged the windmill. No analogy
16 intended, of course, between the learned opponents and the
17 windmill. We recognize it is quite clear that the majority
18 has donned the white hats and as the official spokesman of
19 sin, we will have to do the best we can to convince you
20 that the lottery provision simply should not be in the
21 Constitution.

1 We are aware of the adage of Al Capp's Mammy
2 Yokum that good is better than bad because it is nicer and
3 we realize that our opponents follow straight down that
4 narrow path. Nevertheless we feel it is incumbent upon
5 us to urge you that this matter, like many others that
6 have come before this Convention, is not a constitutional
7 matter and that even if it were, it is not nearly so
8 important as has been alleged. I will not trouble you
9 with going at length through the Minority Report.
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1 I will not trouble you with going at length
2 through the Minority Report. It has been presented to you
3 and I will try to limit my appeal to about five minutes,
4 if you will promise to read the minority report sometime
5 while the majority is talking.
6 Judge Sherbow has already anticipated most of the
7 minority report. He has set it up, and he has decimated it
8 with his argument, and we will not trouble you with it again.
9 Fortunately, most of the items which he covered
10 we did not intend to cover, anyway.
11 There are four basic points to our report.
12 The first is that we readily agree that there is a strong
13 argument that a lottery or any system of lottery, either
14 controlled by the State or its subdivisions, or by inde-
15 pendent parties will not necessarily relieve the State and
16 its citizens of the entire tax burden. We do not feel
17 that the lottery will supplant all the income taxes and all
18 the sales taxes and all the property taxes and all the
19 other taxes.
20 We feel that it may still be necessary, even if
21 the legislature some day saw fit to have a lottery that

1 it would have taxes also. We simply urge to you that
2 it is not the foreclosed position that a lottery cannot be a suc-
3 cessful means of self-finance.

4 The judge has told you that New Hampshire is not
5 satisfied with their lottery. He has suggested that
6 New York is not satisfied with their lottery, and he has
7 suggested that Great Britain is not satisfied with their
8 lottery.

9 I believe it was Delegate Weidemeyer that
10 pointed out that the great State of Israel is more than happy
11 with their lottery. There are countries all over this
12 world that are more than happy with their lottery, and we
13 suggest to you pure and simply as to whether or not the
14 lottery is a good financial possibility that it may be --
15 only that it may be; and that of all the areas in this Con-
16 stitution in which we should not be restrictive to the
17 legislature, finance more than any other single item should
18 be unrestricted.

19 The mind of the prophet is totally inept at
20 this point to conceive all the myriad financial programs
21 that may come before the legislature sometime, and that

1 they will have to reflect whether or not the program might
2 be a good means of finance just for this purpose.
3 We submit that they should not be foreclosed.
4 That moves us to the legislature, which is my
5 second point. You have been told that the legislature does
6 not want to have to deal with this legislation. You have
7 been told that a very prominent legislator will make an
8 appeal to this effect.
9 I suggest to you that one legislator appeared
10 before our committee, another one or two were on our com-
11 mittee, and they did in all candor suggest that they would
12 prefer not to have to deal with this issue.
13 I suggest to you that the executive department,
14 the legislative branch, and the judicial branch has spent
15 the main time in its thrust to this Convention to strengthen
16 those branches. We have done all we could to bring about
17 a legislature in the State of Maryland that will have the
18 power and the strength and the wisdom to deal
19 with the people as they should be dealt with, and to do for
20 them as time comes what is best to be done for them at
21 that particular time.

1 We suggest to you in principle that to the extent
2 that the legislature in any way is restricted from the flexi-
3 bility to deal with problems as they arise, to that extent
4 the legislature, which in fact we all wish to strengthen,
5 is weakened.
6 There is a naked statement in the majority report
7 that lotteries are debilitating effects on State finance.
8 There is no foundation for that statement, no citation
9 for it. It just simply is the opinion of the majority --
10 or at least some of the majority.
11 We suggest to you that even if it is so, the
12 fact that a lottery might have a debilitating effect on the
13 finances of the State is not sufficient cause to restrict
14 the legislature from an entire field of possible finance
15 without having the wisdom and the judgment of the facts
16 before the Convention to make such a decision.
17 Thirdly, I think we might call the point "sin."
18 It has been suggested to you that this is a bad thing.
19 In the ancient days the great institutions of the State of
20 Maryland went forth into the world to raise money. Even
21 the Lutherans could solicit the Episcopalians, I believe

1 it is said somewhere in the majority report, and true,
2 that is a good thing.
3 It is suggested that the evil plan which is now
4 before you no longer has the spirit of generosity, I believe
5 it says in the majority report, which once permeated these
6 wonderful lawyers that we had in Maryland.
7 I suggest to you that I am a farm boy, and I
8 don't know much about the sophistication of Baltimore, but
9 I know hogwash when I see it, and without any question in
10 my mind, the purpose of a lottery now, in the past, and in
11 the future, will always be to raise money.
12 The purpose of a lottery is to raise money.
13 If you can show me any time when a lottery in this State
14 or any other State was held for any other purpose, I will
15 take that statement back, but I doubt it.
16 The purpose of the State would be to raise money.
17 The purpose of a Catholic Church's bingo game would be to
18 raise money. The purpose of any institution, organization,
19 State political subdivision or group or individual that
20 holds a lottery henceforth and evermore would be to raise
21 money, purely and simply.

1 I suggest to you if that effort is unsuccessful
2 in raising money then the legislature would do away with
3 it, the church would do away with it, and whoever has
4 it would do away with it.
5 Generosity is not the purpose of a lottery.
6 It is to raise money. We suggest to you again it
7 may be sinful, it may not. It may be evil, it may not.
8 But it is done throughout this State.
9 There is hardly a community that I know of that
10 sometime during every week of this year will not have
11 some form of gambling game to raise money.
12 We suggest to you only that at this time it is
13 not the purpose nor the wisdom of this Convention to
14 forestall forever the opportunity of the legislature of the
15 State of Maryland, the political subdivisions and the people
16 of the State of Maryland to use some form of gambling de-
17 vice which may be used to raise money, and I say to you
18 it is quite clear from the presentation of the majority
19 that the word "lottery" remains whatever the court of
20 appeals says it means, now and in the future.
21 Finally, we submit simply that it is not a consti-
tutional matter.

1 In the minority report we say that the arguments
2 set forth by the majority that the matter of lotteries
3 in general is a proper subject for constitutional import
4 is simply untrue and has no basis in fact. The fact is
5 that prohibitions against lotteries exist in many constitu-
6 tions, State constitutions having long been a subject of
7 critical analysis for their wordiness, archaicness and
8 general clumsiness is no argument to justify its inclusion
9 in a proposed model Constitution.
10 The arguments that organized gamblers will rush
11 in if a State lottery is created or that such interests will
12 invade our land if scattered churches are granted a private
13 lottery is nonsense. State lotteries exist in our nation
14 today and there is probably not a State, county, municipality
15 or hamlet that has had a private lottery every month.
16 The question is not whether we will have lotter-
17 ies in the State of Maryland, but whether they will be casti-
18 gated in the supreme pronouncement of the Constitution and
19 overlooked in everyday life, as they are now; or whether the
20 matter will be left open for the legislature to deal with
21 in a constructive and organized manner.

1 You have heard about Rhode Island.
2 I hope in the discussion Judge Sherbow will read you the
3 rest of the editorial of which he read a part. I believe
4 the first word when he began to read was, "Also the State
5 did" so and so. I would be very interested in what else
6 the State did which caused them to withdraw the Constitution.
7 I am sure that the restriction or the removal of a lottery
8 ban was not the only reason that they saw fit to withdraw
9 the Constitution of the State of Rhode Island.
10 I am also interested because in the most recent
11 Saturday Evening Post, I believe it is the last one
12 out, there is a four or five page article on the Mafia,
13 and in New England the place they concentrate on is Rhode
14 Island and Providence. And that Mafia has been in existence
15 all this time when they had the ban, and I suggest to you
16 it is not going to change whether they do have them or don't
17 have them, whether they ignore it or they don't. Gamblers
18 are going to be where the gamblers can make money, and the
19 gamblers are not going to come running down to Maryland if
20 we put in a lottery.
21 You have heard about England, and I suggest to

1 you England just does not make any money. England had
2 gamblers before, and they will have gamblers until the
3 year 2000. They are not going to appear or disappear
4 because of a lottery.
5 In Rhode Island we talked about the Mafia which
6 has been there for some time. I suggest to you that in the
7 State of Ohio there have been court decisions finding that
8 the gasoline games that we have been talking about are
9 lotteries, and are therefore illegal.
10 Very recently I saw a full page ad in a newspaper
11 by the Sinclair Motor Company. I don't have to tell you
12 what the gasoline companies are doing in the State of
13 Maryland. They are all over the State of Maryland, Ameri-
14 can, Sunoco, Sinclair, every major gas company has something
15 in the form of a lottery.
16 I would like to read to you what they said
17 in the paper about the Israel lottery.
18 The gentleman said: "The solution to the slug-
19 gish State lotteries in the United States is simple, accord-
20 ing to Dr. Michael Landau: Give the people more action.
21

1 Landau runs the Israeli lottery, one of the most successful
2 in the world. During the last fiscal year it produced more
3 than 13 million in earnings for schools and hospitals."
4 He goes on to say why he thinks it ought to be
5 run. He goes on to say, "One cannot argue with the success
6 of the operation he runs. Since the nonprofit corporation,
7 controlled by the Government, began in 1951, it has raised
8 more than $149 million. Out of profits, ten hospitals,
9 207 dispensaries and more than 9,000 class rooms have been
10 erected in Israel. The schools and hospitals receive about
11 31 percent of the income."
12 Then it goes on to say what happens to the rest.
13 I want it understood that I am not advocating a
14 lottery either for myself or on behalf of the minority. I
15 think I said at a hearing one time I don't smoke, I don't
16 drink, even coffee, I don't gamble, as a matter of fact I
17 don't even fool around with the girls -- (laughter.)
18 THE CHAIRMAN: The Chair recognizes Delegate
19 Gallagher.
20 DELEGATE GALLAGHER: Do you tell the truth?
21 (Laughter.)

1 DELEGATE DUKES: Whenever it serves my purpose,
2 Delegate Gallagher. I havethat in common with the majority.
3 As I was saying, I suppose I am something of a prude. I
4 don't favor a lottery and I am sure if I were in the General
5 Assembly I would vote against it, but I came down here to
6 write a Constitution. I don't think that this is any time
7 or place for us to decide what is good or bad for the
8 people of the State of Maryland on specific issues. It is
9 not a broad principle. It is not an item that we need to
10 be concerned about. It would seem to me almost ludicrous
11 that one of the nation's great horse racing states would
12 stand up on its hind legs and cry how sanctimonious we are.
13 We prohibit lottery in the State of Maryland. We have done
14 it before and I don't see that that is any reason to do it
15 again and I think at this point I think it is time to clean
16 up the Constitution a little. Let us stop putting all
17 this trash in and let us put in only those things that are
18 broad principles and leave this little provision out.
19 I have one final word. I recall that Judge
20 Sherbow said as he opened, it was only 12 little words.
21 He is right. I also recall that it was rumored that

1 Adolph Hitler, as he commenced his invasion said, "Destroy
2 Russia".
3 DELEGATE CLARK: Are there any questions of the
4 minority spokesman? The Chair recognizes Delegate
5 Hostetter.
6 DELEGATE HOSTETTER: I think it is only fair to
7 tell this group something, Delegate Dukes. Ten years ago
8 Delegate Dukes was a rising law student at Duke University
9 and happened to be my business law professor at that time
10 and,Professor, your lectures are as good as ever.
11 DELEGATE CLARK: The Chair recognizes Delegate
12 Scanlan.
13 DELEGATE SCANLAN: Maybe,Mr. Dukes, maybe you
14 could clarify for me and some of the others in the chamber
15 an issue that remains unclarified.
16 The first issue is this, shall we put something
17 in the Constitution to prohibit the General Assembly and
18 the political subdivisions from conducting a lottery, what-
19 ever a lottery is, leave that aside for a minute, either
20 by itself or having a private group conduct that lottery
21 for the State, for the political subdivision. Now, that

1 is a closer issue. But in the questions put to Judge
2 Sherbow, another issue loomed, whether or not the language
3 suggested by the majority if adopted as part of the Consti-
4 tution would place in the hands of the Court of Appeals
5 the right to strike down private lotteries, again whatever
6 they may be, not getting to the definition of lottery,
7 and I know a number of questions were directed to Judge
8 Sherbow on this point but he seemed to have a cork for
9 every hole and I never really got the clear intention of
10 the committee. Was it by this language, even though you
11 disagree with it, Mr. Dukes, and therefore I suppose your
12 views would be so much prejudiced, in your opinion would
13 the language of the majority if adopted by the Convention
14 and put into the Constitution, would it prohibit lotteries,
15 whatever lotteries are, lotteries conducted by private
16 groups as opposed to lotteries conducted by the State or
17 its political subdivisions or was this discussed at all in
18 your meetings?
19 DELEGATE CLARK: Delegate Dukes.
20 DELEGATE DUKES: We discussed generally the
21 area about which you questioned. My memory was not as good

1 as it might have been but I understood Judge Sherbow to say
2 directly and without equivocation that although the inten-
3 tion of the committee plainly was not to include bingo,
4 that it was the intention of the committee to include for
5 the state, for all of its political subdivisions and for
6 any type of private operation be it an association, group,
7 organization or an individual, the prohibition against
8 lotteries, whatever that might be as determined by the
9 Court of Appeals, in fairness I think I should add he reit-
10 erated time and time again that in his opinion and he felt
11 the consensus of the committee opinion that bingo as cur-
12 rently operated throughout the State would not be so
13 classified by the Court of Appeals but if it were it and all
14 other forms of money raising by private groups if found to
15 be lotteries by the Court of Appeals would be barred by the
16 prohibition before us.
17 DELEGATE CLARK: The Chair recognizes Delegate
18 Koss.
19 DELEGATE KOSS: Delegate Dukes, in your inter-
20 pretation, therefore, would lottery be dependent upon
21 whether or not it raised money?

1 DELEGATE CLARK: Delegate Dukes.

2 DELEGATE DUKES: You mean whether or not it was
3 successful or whether or not it was intended to raise
4 money?

5 DELEGATE KOSS: Well, its primary intent, just
6 baldly that. The reason for my question is that Chairman
7 Sherbow said that in the so-called give-aways dependent
8 upon a purchase, he would interpret that as a lottery.

9 DELEGATE CLARK: Delegate Dukes.

10 DELEGATE DUKES: Your question is?

11 DELEGATE CLARK: Delegate Koss.

12 DELEGATE KOSS: Would you give it the same
13 interpretation?

14 DELEGATE CLARK: Delegate Dukes.

15 DELEGATE DUKES: Yes.

16 DELEGATE CLARK: Delegate Koss.

17 DELEGATE KOSS: Then my next question is that
18 Deelgate Sherbow said that the intention of the majority
19 was to continue the same language which is now in Section
20 36 and the same effect. Would it not be true then that
21 these names were now illegal?

1 DELEGATE CLARK: Delegate Dukes.

2 DELEGATE DUKES: I don't think that the inter-
3 pretation placed on the language proposed by Judge Sherbow
4 from here is a continuation of the same thing that the
5 present prohibition says. I disagree with that. I think
6 the present prohibition says that the State may not make
7 grants and therefore it would prohibit state action or
8 state authorized actions. As I understood Judge Sherbow,
9 anything, regardless of whether the State sanctioned it,
10 authorized it, permitted it or otherwise would be prohibited
11 by an individual if it were a lottery under the new language.
12 In my opinion the old language did not go that far.

13 DELEGATE CLARK: The Chair recognizes Delegate
14 Vecera.

15 DELEGATE VECERA: Delegate Dukes, what is the
16 construction of the word "lottery" as it is presently being
17 used in the majority report?

18 DELEGATE CLARK: Delegate Dukes.

19 DELEGATE DUKES: I have no idea.

20 DELEGATE CLARK: Delegate Vecera.

21 DELEGATE VECERA: If we have no idea, then how are

1 we to vote intelligently upon a word if we have no concep-
2 tion as to what the meaning is?
3 DELEGATE CLARK: Delegate Dukes.
4 DELEGATE DUKES: Do what I tell you. (Laughter.)
5 DELEGATE CLARK: The Chair recognizes Delegate
6 Vecera.
7 DELEGATE VECERA: I have one more question. What
8 is that?
9 DELEGATE CLARK: Delegate Dukes.
10 DELEGATE DUKES: I would try to tell you quickly
11 so that you could follow.
12 DELEGATE CLARK: Delegate Vecera.
13 DELEGATE VECERA: What do you tell us to do?
14 DELEGATE CLARK: Delegate Dukes.
15 DELEGATE DUKES: I discussed with the Chairman of
16 the Committee a couple of days ago whether or not it was
17 actually necessary to submit some form of amendment and I
18 suggested to him it was our position unless he indicated
19 otherwise that the vote on the issue could be focused simply
20 by a vote for the Committee Proposal which would be in favor
21 of the ban as proposed, a vote against the Committee

1 Recommendation if it didn't, so unless the issue changes by
2 amendment or some other means as I understand it, subject
3 to correction by Judge Sherbow or the Chair, if you were
4 in favor of the ban in the Constitution, you would vote for
5 the Committee Recommendation, if you were against it in its
6 present form or any form you would vote against the Commit-
7 tee Recommendation.
8 DELEGATE CLARK: Delegate Vecera.
9 DELEGATE VECERA: I take it you are advocating
10 that we remain silent on the particular point.
11 DELEGATE CLARK: Delegate Dukes.
12 DELEGATE DUKES: That is correct.
13 DELEGATE CLARK: The Chair recognizes Delegate
14 Pullen.
15 DELEGATE PULLEN: Could you tell us the reasons
16 why our ancestors put this prohibition in the Constitution
17 in 1867? Experience? Morality or what?
18 DELEGATE CLARK: Delegate Dukes.
19 DELEGATE DUKES: As I recall such studies we did
20 in the committee and such as I did myself privately, at the
21 time the prohibition was first placed in the Constitution

1 a good deal of shenanigans were being played in the legis-
2 lature and by the legislature in terms of private grants
3 to individuals to run a lottery. At the time the grant
4 was first placed in the Maryland Constitution, it is my
5 opinion and my observation on what I have read that the
6 only intention at that time was to prohibit grants to private
7 individuals and not to prohibit the state itself from con-
8 ducting a lottery or its political subdivisions. It is
9 only by the opinion of the Attorney General that we now
10 have the restriction and the interpretation that the State
11 itself may not engage in lottery.
12 I think the purpose was to prevent private
13 grants to private individuals.
14 DELEGATE CLARK: Delegate Pullen.
15 DELEGATE PULLEN: Would those same reasons hold
16 for the Constitution in 1854 and in 1850 and are those
17 reasons sound today as they were then?
18 DELEGATE CLARK: Delegate Dukes.
19 DELEGATE DUKES: I don't think it was sound then.
20 DELEGATE CLARK: Delegate Pullen.
21 DELEGATE PULLEN: Would you mind elaborating

1 upon your reasons on that other than what you have told us
2 already?
3 DELEGATE CLARK: Delegate Dukes.
4 DELEGATE DUKES: Yes, sir, I will be glad to do
5 so. I don't think the Constitution is a place where we
6 shall try to say you shall or shall not try to do a number
7 of things which I consider to be the duty of the legisla-
8 ture. I feel a number of items that we have passed already
9 probably fall in that category. Some I voted for, some I
10 voted against. Some I voted for only because others
11 had passed and I wanted to be consistent.
12 I can give you a list of half a dozen other
13 things already that I don't think belong in the Constitu-
14 tion. This easily is one of them. I think it is very
15 clear that if we put this ban in the Constitution, it
16 stands out like a lone pine tree on a hill among all the
17 sins that go on in the State.
18 We simply would have made an announcement that
19 means nothing whatsoever, we will have picked out an iso-
20 lated consensus of evil, I suppose, by the group that has
21 been sent down here and we will not begin to touch on all

1 the myriad of other things that we could probably also
2 reach a consensus on that should be banned in the Constitu-
3 tion.
4 I think it is silly to pick out one.
5 DELEGATE CLARK: Delegate Pullen.
6 DELEGATE PULLEN: You say that this prohibition
7 was put in the three Constitutions to correct an evil that
8 those people thought existed in those days. Is that a
9 correct assumption?
10 DELEGATE CLARK: Delegate Dukes.
11 DELEGATE DUKES: I don't know that I used the
12 word "evil". I agree that I am a spokesman of evil. I
13 don't know the word in that time. However, I know it was
14 something that they thought should not be going on. I
15 assume that the people who passed the Constitution at the
16 time the ban was first put in had a practice going on in
17 the State of Maryland which they wished to outlaw. They
18 did it in the Constitution. I would say it should have been
19 done in the legislature even then if it was a thing that
20 should have been barred.
21 DELEGATE CLARK: Delegate Pullen.

1 DELEGATE PULLEN: Nevertheless, they did it?

2 DELEGATE CLARK: Delegate Dukes.

3 DELEGATE DUKES: Apparently so.

4 DELEGATE CLARK: The Chair recognizes Delegate

5 Ulrich.

6 DELEGATE ULRICH: I notice through the record

7 that you did vote for consumer protection. You also passed

8 on the natural resources, I gather you are quite inconsist-

9 ent.

10 DELEGATE CLARK: Delegate Dukes.

11 DELEGATE DUKES: I didn't pass on natural re-

12 sources. I was not here on the day of natural resources.

13 Had I been here on the day of natural resources I would

14 have voted against it. I voted in favor of consumer pro-

15 tection because natural resources had passed and I thought

16 if we are going to conserve the trees of this State I

17 think we ought to conserve the people. If I were consistent

18 on this point I would agree with you. That is the very

19 item I was talking about a few minutes ago.

20 DELEGATE CLARK: The Chair recognizes Delegate

21 Wiedemeyer.

1 DELEGATE WIEDEMEYER: Mr. Dukes, isn't it true
2 that in 1867 when the prohibition against lottery grants
3 was put into the Constitution, that at that time we did
4 not have Article 16, referendum provision on acts of the
5 Legislature and that the referendum provisions were not
6 put in except as when they were added by Chapter 673 by
7 acts of 1914 ratified to November 2, 1915?
8 DELEGATE CLARK: Delegate Dukes.
9 DELEGATE DUKES: Delegate Wiedemeyer, I don't
10 know the answer to that, but since you are on my side I
11 am going to assume the answer is yes.
12 DELEGATE CLARK: Delegate Wiedemeyer.
13 DELEGATE WIEDEMEYER: And if the Legislature in
14 the old days abused its privilege and the people did not
15 have the right of referendum until 1915, then there might
16 have been some reason for putting in prohibition at that
17 time, isn't it true?
18 DELEGATE CLARK: Delegate Dukes.
19 DELEGATE DUKES: I would concur with that observa-
20 tion.
21 DELEGATE CLARK: The Chair recognizes Delegate

1 Armor.

2 DELEGATE ARMOR: Delegate Dukes, your clippings
3 were effective in showing one side of the picture, would
4 you happen to have a couple of little clippings maybe
5 that would tell us something about the lottery in New York
6 State, the recently instituted lottery where the revenue
7 estimates have fallen flat on their face and therefore they
8 are not raising the money and their budget is slightly out
9 of balance by some millions of dollars?

10 DELEGATE CLARK: Delegate Dukes.

11 DELEGATE DUKES: I don't have any such little
12 clippings. If you would have them I would be happy to
13 read them.

14 All I recall about New York was that Mr. Clarence
15 Miles, who I believe is still in the gallery, appeared
16 before our committee at the hearing on lottery. Mr. Miles
17 is the Chairman of the Governor's Commission on Gambling,
18 I don't know the name, but essentially it is a body that is
19 essentially studying this problem at this time. He dis-
20 cussed with us New Hampshire, he discussed with us New York.
21 He advised that during the first month the lottery in New

1 York collected about $5 million. I think he also told us
2 that a $10 ticket was only sold in banks and savings and
3 New York and everyone in New York thought that was silly
4 and that they were going to reconstruct the lottery as to
5 the same kind of thing that Mr. Landau was talking about
6 in Israel.
7 It was his opinion that this matter should not
8 be treated in the Constitution and it was his testimony
9 before our committee that it should be left out of the
10 Constitution.
11 DELEGATE CLARK: The Chair recognizes Delegate
12 Koss.
13 DELEGATE KOSS: Delegate Dukes, in your acquies-
14 cence with Delegate Wiedemeyer's statement, wouldn't it
15 also be true though that if this ban were eliminated and
16 the General Assembly did see fit to enact a State lottery
17 because it were a revenue measure it would not be subject
18 to referendum?
19 DELEGATE CLARK: Delegate Dukes.
20 DELEGATE DUKES: Judge Sherbow said in his tes-
21 timony that it was not a tax. The whole theory of concern

1 with the local governments was that this particular matter
2 would be possible within their power until it was restricted
3 because it was not a revenue matter.
4 DELEGATE CLARK: Delegate Sherbow.
5 DELEGATE SHERBOW: What I said was that if the
6 political subdivisions were involved, they could provide
7 because where they were concerned, they were treated not
8 as a tax but as a means of building either a swimming pool
9 or some golf course or something of that sort. They
10 didn't have to worry about it as a tax. I was dealing sole-
11 ly with a political subdivision.
12 DELEGATE CLARK: Delegate Dukes.
13 DELEGATE DUKES: I suppose the point the Judge
14 is making is that the State might treat it either way. If
15 it were treated as a tax, if a referendum was attempted
16 and the Court of Appeals said it was a tax then I suppose
17 under the provisions that are being offered later, it
18 would not be subject to referendum. It would not be neces-
19 sary to treat it that way.
20 DELEGATE CLARK: Delegate Koss.
21 DELEGATE KOSS: I suggest that the language of

1 the exception in the referendum article is slightly broader
2 than tax. I think it says appropriation, which it would
3 seem to me might logically include the purposes for which
4 a lottery were enacted.
5 DELEGATE CLARK: Delegate Dukes.
6 DELEGATE DUKES: I would think the word "tax"
7 would come much closer than appropriation if it comes close
8 at all.
9 CHAIRMAN CLARK: The Chair recognizes Delegate
10 Price.
11 DELEGATE DUKES: That is just the man I was
12 waiting to hear from.
13 DELEGATE PRICE: Thank you very much, my friend,
14 Delegate Dukes. You mentioned among other things that the
15 Legislature if this is included in the Constitution would
16 not be free to deal with the problems as they arise and I
17 want to submit that this may be true in other areas, too,
18 that the Legislature will not be free to deal with problems
19 as they arise and I just want to make a few observations of
20 my own.
21 DELEGATE CLARK: Delegate Price, this is a time

1 for questions.

2 DELEGATE PRICE: Well, sir, I was wondering

3 about that, too.

4 DELEGATE CLARK: I should like to remind the

5 group that we have 30 minutes of controlled time for both

6 sides, so please confine this to questions.

7 DELEGATE PRICE: I will withhold my questions

8 and observations until such time although I noticed that

9 the good Delegate Sherbow has objected to some questions,

10 not only questions but some debates and there have cropped

11 up here more than just questions so if we can move --

12 DELEGATE CLARK: If you have a legitimate question,

13 now is the time to ask it.

14 DELEGATE PRICE: Well, sir, I do have a legiti-

15 mate question but it is wrapped up with some other things

16 so I will just wait.

17 DELEGATE CLARK: Are there any other questions

18 at this time?

19 The Chair recognizes Delegate Cardin.

20 DELEGATE CARDIN: One question, if I may. Is

21 it not conceivable that the State Legislature if this were

1 to be removed from the Constitution could pass a statute
2 which could prevent individual lotteries but simply permit
3 the State to have a lottery for its own benefit.
4 DELEGATE CLARK: Delegate Dukes.
5 DELEGATE DUKES: I would think if it were not
6 contained in the Constitution that the Legislature could do
7 whatever it wished.
8 DELEGATE CLARK: Delegate Armor, do you still
9 have a question?
10 DELEGATE ARMOR: Delegate Dukes offered to read
11 one of these very small clippings. If one of the pages
12 will take it to him I will appreciate it if he will read it.
13 DELEGATE CLARK: Delegate Dukes.
14 DELEGATE DUKES: If I understand your question,
15 Delegate Armor, it is whether or not I can read. (Laughter.)
16 This says, The Washington Post, Wednesday the
17 10th of August, I believe, 1967.
18 It says, "Albany, New York. Sales of lottery
19 tickets fell to $4,125,698 in July, a decrease of more than
20 $2.3 million from June's sales and far below a hoped for
21 $30 million monthly total.

1 "Sales of the $1 tickets totaled $6,447,605 in
2 June, the first month of the State's new ventures, aimed
3 at aid for education."
4 Is that a satisfactory answer to your question?
5 DELEGATE CLARK: Delegate Armor.
6 DELEGATE ARMOR: I would like you to comment on
7 it if you like.
8 DELEGATE CLARK: The Chair takes it that there
9 are no further questions at this time. We will now move
10 to 30 minutes of controlled debate and Delegate Dukes, you
11 have the first 30 minutes.
12 The Chair recognizes Delegate Sherbow.
13 DELEGATE SHERBOW: I would like to move that the
14 proposal in line 9 be amended to read, "lotteries shall
15 not be authorized by the State or its political subdivi-
16 sions", the only change is changing the word "sanction" to
17 the word "authorized".
18 DELEGATE CLARK: You are asking unanimous con-
19 sent to make this change?
20 DELEGATE SHERBOW: If that is the proper proce-
21 dure.

1 DELEGATE CLARK: If there is no objection, the
2 change will be made.
3 The Chair recognizes Delegate Raley.
4 DELEGATE RALEY: Mr. Chairman, it was my under-
5 standing that we were just going to vote on the principle.
6 That we were not going to open up to amendments on it. We
7 were just going to vote on whether we should or should not
8 include a prohibition against lotteries.
9 DELEGATE CLARK: That is true.
10 Delegate Sherbow wanted to make a change in his
11 memorandum and we had unanimous consent to do so. This
12 is not the time for amendments, that is true.
13 THE CHAIRMAN: Committee Recommendation SF-2
14 has been modified by striking the word "sanctioned" in
15 line 9 and in lieu thereof inserted the word "authorized".
16 The Chair recognizes Delegate Dukes.
17 DELEGATE DUKES: Prior to proceeding, Mr. Chair-
18 man, may I direct a parliamentary inquiry to the Chair?
19 THE CHAIRMAN: State the inquiry.
20 DELEGATE DUKES: In your partial absence, Dele-
21 gate Raley asked a question to suggest that at this time
we were only voting on the principle of the item. That

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1 was not my understanding, I was thinking that the amend-
2 ments would be in order at this time. My question is
3 who is correct? Me or him?
4 THE CHAIRMAN: The procedure right now would be
5 to debate on the Minority Report Recommendation which may
6 or may not be in the form of an amendment. Does the
7 minority desire to offer an amendment at this time?
8 Delegate Dukes.
9 DELEGATE DUKES: No, we offer no amendment. I
10 understood the Chair previously to yourself to indicate
11 that the amendment was not in order at this time. My ques-
12 tion is essentially are we or are we not proceeding to
13 debate on the matter before us at the close of the debate
14 we will vote yea or no, for or against.
15 On the committee recommendation as it stands
16 before us.
17 THE CHAIRMAN: That is true except that in
18 other instances we have permitted modifications of the type
19 that have just been made. I take it your question is not
20 directed to that modification.
21 Delegate Dukes.

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1 DELEGATE DUKES: No objection to that.

2 THE CHAIRMAN: All right. Then we are proceed-

3 ing to consider the Committee Recommendation.

4 The parliamentarian told me the amendments are

5 in order at any time in consideration of the matter. Dur-

6 ing the course of debate anyone may offer an amendment.

7 When I say anyone I mean anyone who properly has the floor

8 since it is controlled debate.

9 Delegate Koger.

10 DELEGATE KOGER: I would like to speak in support

11 of the minority report.

12 THE CHAIRMAN: We are in controlled debate now.

13 Delegate Case.

14 DELEGATE CASE: I have a question of the Chair-

15 man of the Committee.

16 THE CHAIRMAN: Delegate Sherbow.

17 DELEGATE SHERBOW: Yes.

18 THE CHAIRMAN: Delegate Case. The original

19 recommendation which is before the Committee says that

20 lotteries shall not be sanctioned. To my understanding

21 that was that there shouldn't be any lotteries, no matter

who put them on, whether they be a private individual, a

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1 state or others. You have substituted the words "author-
2 ized by states political subdivisions," does this mean a
3 church or any private club, the Elks or anyone else you
4 want to think of, absent legislation on the subject, could
5 they authorize the lottery --
6 THE CHAIRMAN: Delegate Sherbow.
7 DELEGATE SHERBOW: The answer I have is that
8 sanction as we intended to use it was in the same sense as
9 authorized. Now, you asked if the State could authorize
10 some club --
11 THE CHAIRMAN: Delegate Sherbow, I think the
12 question that Delegate Case is asking is precisely the one
13 that Delegate Burdette asked you that the Chair reframed
14 and I think Delegate Case is asking whether your answer
15 is different because of the substitution of the word
16 "authorized", in other words, if the recommendation is
17 amended as you have indicated and there is no gambling
18 statute to prohibit lotteries or any other form of gambling,
19 would a private lottery be prohibited under your modified
20 language as you indicated it would be prohibited under
21 your previous language?

1 DELEGATE SHERBOW: Yes.

2 THE CHAIRMAN: Is that your question, Delegate

3 Case?

4 DELEGATE CASE: Mr. Chairman, that answers the

5 question but I respectfully call to your attention that I

6 think it is the wrong answer. This says lotteries shall

7 not be authorized by the State or its local political sub-

8 divisions. Assume with me that there is no statute on the

9 subject at all. I just don't see wherein this prohibited

10 the corporation from being formed for the express purpose

11 of holding the lottery.

12 THE CHAIRMAN: Delegate Sherbow.

13 DELEGATE SHERBOW: The answer is that the State

14 has in its Constitution, that State lotteries shall not be

15 authorized by the State or its political subdivisions and

16 if they are not authorized, they are not lawful.

17 THE CHAIRMAN: Delegate Case.

18 DELEGATE CASE: But the nonauthorization is by

19 the State or its political subdivisions, it is limited to

20 that. It is not a complete absolute ban on lotteries and

21 this is what I thought the committee was trying to reach.

1 THE CHAIRMAN: I wonder if the question could be
2 resolved in this way: What we are talking about is the
3 meaning or definition of the word to be used, although I
4 think from the answers given that the intent is clear.
5 Could we leave to the Committee on Style the choice of the
6 word with the statement that the provision is intended to
7 prohibit lotteries whether they are granted by the State,
8 authorized by the State, sanctioned by the State or per-
9 mitted by the State, allow them to choose the proper word.
10 Would that meet the question, Delegate Sherbow?
11 DELEGATE SHERBOW: Yes, but I still want to make
12 it clear that it was not the intention of the Committee by
13 the definition of lottery to prohibit bingo.
14 THE CHAIRMAN: I don't think we are talking about
15 the question bingo in this context. What we are concerned
16 with is the meaning of the whole prohibition and not the
17 definition of "lottery" and I think what we must have a
18 clear intent about is whether by the language used it is
19 intended to prohibit by the constitutional provision alone,
20 to prohibit public or private lotteries.
21 Delegate Sherbow, does that answer the question?

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1 DELEGATE SHERBOW: Yes, sir.

2 THE CHAIRMAN: Does that answer the question,

3 Delegate Case?

4 DELEGATE CASE: Yes.

5 THE CHAIRMAN: Delegate Penniman, have you made

6 a note about it so there is no question about it?

7 DELEGATE PENNIMAN: Yes.

8 THE CHAIRMAN: Delegate Marion.

9 DELEGATE MARION: Could an additional verb be

10 added to the four you just mentioned? Does the breadth

11 of the language include the verb conducted?

12 THE CHAIRMAN: Chairman Penniman can make a

13 note of that. I think the intent is to prohibit both

14 public and private lotteries.

15 Delegate Case.

16 DELEGATE CASE: So it would be fair to say what

17 this says is that all lotteries in this State shall be

18 prohibited?

19 THE CHAIRMAN: The Chair understands that is

20 the meaning of it. Would you concur, Delegate Sherbow?

21 DELEGATE SHERBOW: Yes, sir.

1 THE CHAIRMAN: Very well, I suggest, Delegate
2 Penniman, that you have your secretary make a note of that
3 particular phrase as indicating the meaning of the inten-
4 tion.
5 Delegate Dukes, before we begin the period of
6 controlled debate, the Chair is not clear as to whether you
7 intend to suggest merely disapproval of this recommenda-
8 tion or whether you intend to propose an amendment. If
9 the latter it should be offered at this time.
10 Delegate Dukes.
11 DELEGATE DUKES: We intend to recommend disap-
12 proval. There will be no recommendation whatsoever.
13 THE CHAIRMAN: Very well.
14 Delegate Dukes.
15 DELEGATE DUKES: Mr. Chairman, recognizing as we
16 do the shadow of darkness in which we work we will attempt
17 to present a very diversified field. We will start off by
18 yielding three minutes to that screaming delegate from
19 Baltimore, Delegate Bothe.
20 THE CHAIRMAN: Delegate Bothe.
21 DELEGATE BOTHE: Fellow delegates, I feel vastly

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1 honored at the introduction and the opportunity to be the
2 first person on this floor to argue in favor of the
3 Minority Report understanding that we had a very objective
4 presentation on both sides along with questions only intended
5 to secure enlightenment up to this point. However, I am
6 going to argue very narrowly. I am not going to say which
7 side of evil or good I happen to be on or express what
8 views I may have on lottery.
9 Frankly, I have none. Perhaps rather than as a
10 screaming liberal, Delegate Dukes called on me as a member
11 of the Constitutional Convention Commission. We didn't
12 have anywhere near as much fun discussing the subject be-
13 cause we narrowed down our consideration purely to the
14 issue of whether the subject matter belongs in the Consti-
15 tution and have readily determined that it did not.
16 Now, I suggest to you, fellow delegates, that
17 the question of a ban on lottery is merely one which would
18 tie the hands of the Legislature and in a very strange way.
19 I have been serving on the Committee on Personal Rights
20 and Preamble during the last few weeks and we devoted a
21 great deal of discussion to the restrictions that should

be placed on legislative action that might defend the people. Here we are in the strange position of protecting the Legislature from the people. Certainly this is not the area in which the Constitution should deal in any respect. I am willing to gamble here and take a chance on a mature Constitution and I suggest that all of us leave this kind of matter out, make the Legislature stand up to its responsibilities and make the kind of determination which we are here to make, whether we are going to have a State lottery or not going to have it, whatever it means. Incidentally, if we adopt the language with the construction which Delegate Sherbow has said goes with it, we are going far beyond the present Constitution --

THE CHAIRMAN: You have one-quarter minute, Delegate Bothe.

DELEGATE BOTHE: I would not think in 1967 we have to be so much more moralistic than they were in 1964.

THE CHAIRMAN: Delegate Sherbow.

DELEGATE SHERBOW: I yield five minutes to Delegate James.

THE CHAIRMAN: Delegate James.

1 DELEGATE JAMES: Mr. Chairman and fellow dele-
2 gates, I would like to direct my remarks to the general
3 proposition that a prohibition against the lottery should
4 be in the Constitution and to initiate these remarks I
5 would like to read a statement I filed with the Committee,
6 a memorandum to the State Finance Committee on Financing
7 Government by Lottery.
8 I advocate inclusion in the Constitution of a
9 prohibition against financing governmental expenditures
10 by lottery. As a course of conduct, gambling, however
11 fascinating, has two basic flaws: (1) Its attraction is
12 the concept of something for nothing. (2) It takes from
13 the many and gives to the few. The State should not play
14 upon human weakness to finance its expenditures. Nor
15 should it promote a false economics in the name of taxa-
16 tion.
17 Entirely aside from the basic impropriety of
18 state financing by games of chance, experience shows that
19 gambling is an unreliable source of revenue. New Hampshire
20 and New York are now face to face with this hard fact.
21 The fiasco of reliance upon lottery revenues by state

1 government is most evident in New York. So disappointing
2 are the results that New York is contemplating an ignoble
3 promotion of chance taking -- at the expense of the poor
4 and the gullible.
5 Attached to this statement are copies of arti-
6 cles reviewing Maryland's unfortunate experience with
7 legalized lotteries, general historical experience, and
8 England's second thoughts.
9 Is it worth risking Maryland's good name and
10 the erosion of its public standards by legalizing a source
11 of tax revenue, which both historical and current examples
12 show is illusory.
13 I am asking this Committee to recognize that
14 lotteries do not create wealth. In the last analysis,
15 government must be supported by constructive and creative
16 labor. Taxation must rest upon this base -- with the full
17 knowledge and acceptance of the cost of government by the
18 people of Maryland. Games of chance merely hide this fact
19 and they should be barred by constitutional mandate.
20 I would like to supplement this statement by say-
21 ing that you will find the gambling authorizations in those

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1 states which are tourist meccas. They do this to feed upon
2 the visitors and to avoid paying honest taxes themselves.
3 You will find that in Nevada and this is the motivation in
4 New Hampshire. England is motivated by the same policy and
5 I think you will find this also in the Virgin Islands.
6 Now, there has been talk about the great sport of horse
7 racing that has been traditional in Maryland. The real ob-
8 ject of parimutuel betting is to permit horse racing to
9 survive. The amount of revenue that Maryland enjoys from
10 horse racing is inconsequential. It is relatively nothing.
11 So to compare the great sport of horse racing -- to call
12 it a gambling operation is certainly incorrect.
13 Now, the result of permitting lotteries, legal-
14 izing gambling in the State of Maryland, you will find a
15 descent of locusts and sooner or later I predict we will
16 have open gambling in this State. As Judge Sherbow has
17 said the gamblers will come in and the life will be permeated
18 by the gamblers' influence. In the last session of the
19 General Assembly I believe the House passed an authoriza-
20 tion, I believe it was a constitutional amendment to permit
21 a lottery. It will pass the General Assembly and it will be

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1 soon and Maryland's good name will suffer the erosion
2 that comes with open gambling.
3 I call your attention that the Legislative
4 Liaison Committee is in substantial agreement that this
5 Constitutional Committee should be continued and brought
6 forward to the new Constitution.
7 You urge that this is not a frivolous or a funny
8 matter. This is not a time for levity. I like jokes my-
9 self and I have, you might say, a few bad habits which I
10 would not want to relate here, but I want to say to you
11 that it is not a time for laughter because Maryland's good
12 name and Maryland's future is at stake in this vote.
13 THE CHAIRMAN: Delegate Dukes.
14 DELEGATE DUKES: I will call on a conservative
15 from Anne Arundel County, Delegate Wiedemeyer.
16 THE CHAIRMAN: Delegate Wiedemeyer.
17 DELEGATE WIEDEMEYER: Mr. Chairman and members
18 of the Convention, I don't think it is time for jokes
19 either. Neither do I want a joke in the Constitution
20 because this is what it would be as I read this language,
21 sanctioned or authorized, it all means the same thing. When

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1 you get into sanctioned, you get into acquiescence, too,
2 when we get into that, even if the Legislature did nothing
3 anyone who had a conception of what lottery would be,
4 would be clearly authorized to go into any port, in any
5 county in this State and drag in any church or any club or
6 organization that had any kind of a game of chance on his
7 theory that it was lottery and ask that they be enjoined
8 from violating the intent and spirit of the Constitution
9 and as has been explained by the Committee Chairman, this
10 provision is broad and intended to be broad and it is
11 intended to embrace a state lottery and any kind of a
12 gambling lottery that might be conducted by any private
13 individual or club or organization and it also has been
14 explained by the Chairman, that it would be a good bit of
15 what the court said a lottery was or the Attorney General's
16 opinion, so that we might say without having it written in
17 here that the State nor any of its subdivisions shall
18 sanction any lottery in any form except as provided by
19 ruling of the court or by opinion of the Attorney General.
20 Now, rather than have that in our Constitution, so that
21 we are in an uncertain area, we are better off to leave
it entirely out of the Constitution and then let the

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1 Legislature in its discretion legislate in that area of
2 what is and what is not and what is and what should not be
3 and if we keep our provisions of referendum in the Consti-
4 tution, then if the people in the State of Maryland are
5 dissatisfied with any action of the State Legislature, they can
6 at any time go in and take it out on referendum and then we
7 will have the voice of the people.
8 Now, I introduced a proposal here which was
9 before the Committee. It did provide in detail for a
10 State lottery to be operated under the Constitution, but I
11 asked the Chairman not to consider my proposal nor should
12 he put anything into the Constitution regarding lottery
13 because I know I fostered a bill for State lottery for
14 four years in the State Legislature and in 1966 the very
15 bill I gave to the Chairman of the Committee was passed by
16 the House of Delegates by a constitutional majority which
17 indicated to me from the letters I received from people
18 throughout the State indicated that there were numerous
19 people throughout the State that thought the State should
20 operate a lottery.
21 Now, Mr. President, if we put in a prohibition

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1 as strong as the committee has brought it out then I know
2 that right off the bat we have 50 percent of the people in
3 the State of Maryland against this Constitution. On the
4 other hand, Mr. President, if its going just in the reverse
5 and say there shall not be, then we have a large number
6 mad at our Constitution.
7 Mr. President, you have worked too hard, I have
8 worked too hard on this to havea large segment of our
9 population go against our Constitution just because of one
10 little joker in our Constitution. I hope that the Commit-
11 tee's recommendation will fail and that the Constitution
12 will remain silent as the Constitutional Convention Com-
13 mission left it.
14 THE CHAIRMAN: Delegate Sherbow.
15 DELEGATE SHERBOW: Mr. Chairman, I yield five
16 minutes to Delegate Fox.
17 THE CHAIRMAN: Delegate Fox.
18 DELEGATE FOX: Mr. Chairman, and Ladies and
19 Gentlemen of the Committee of the Whole, I am the culprit
20 that introduced the delegate proposal that the Committee,
21 Judge Sherbow's Committee, adopted, and was the source of

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1 this language. I might say that this came about as a
2 result of a meeting in Salisbury called by the Chamber of
3 Commerce and attended by a rather large number of people,
4 about the largest number of people that questioned Dele-
5 gate Adkins and I before we came to the Convention and the
6 suggestion was there made that the ban on lottery should be
7 retained in the Constitution and I said at that time I
8 would be glad to look into it and inquire about it a
9 little bit and investigate it and I felt inclined to intro-
10 duce such a proposal.
11 The more I looked into it and I submit that if
12 the Members of the Committee of the Whole would just take
13 the time to read this report on legalized gambling that was
14 prepared by Mr. Howard Bregel, a prominent Baltimore lawyer,
15 who was interested in the matter and had the report, if you
16 would look over that report I think you would come to the
17 same conclusion that I did, that it should be in the Consti-
18 tution not only because it is there now, but that is the
19 significant point right now. It is there now. If we take
20 it out after this debate, what are we saying to the Legis-
21 lature and what are we saying to the people of Maryland ?

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1 The people of Maryland, as Judge Sherbow indicated, re-
2 jected this idea of legalizing lotteries in a referendum
3 back in 1938. And so far as I know nothing has changed
4 their opinion.
5 Delegate Koss touched on a very significant
6 thing and that is if the State of Maryland should resort
7 to lottery as a source of revenue, the people of Maryland
8 do not have an opportunity to reject it by a referendum,
9 because it is a tax matter and they do not have an oppor-
10 tunity to reject it by a referendum. Therefore, if we
11 really believe that a lottery is a stupid thing, and it
12 isn't a question of morality, a question of good or bad,
13 it is just a question of good common sense. It didn't
14 work in Maryland in Colonial times, it doesn't work in New
15 York today, it doesn't work in New Hampshire. It is just a
16 matter of good common sense. There is no reason to think
17 it is going to work in Maryland as a tax raising measure
18 any time in the future. The difficulty is that we are so
19 anxious to take the tax burden off our shoulders that we
20 grasp at any straw. We hear people misrepresent facts and
21 try to indicate that a lottery will solve tax problems and

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1 we clutch at it only to find out, as Maryland found out,
2 as New York is finding out and as New Hampshire is finding
3 out, that it doesn't do the job.
4 I would hate to see the finances of the State
5 of Maryland in such deplorable condition as I believe they
6 would be if they depended in any significant measure on
7 lotteries and I think it is just good common sense not to
8 have them.
9 If it were passed as a revenue measure the people
10 wouldn't be able to vote on it, they couldn't pass on it by
11 referendum, then I think it is time to place the ban in the
12 Constitution.
13 I realize attempts have been made to ridicule it
14 with little corny humor and I don't know that I can compete
15 with the ploughboy from Hyattsville but I do say to you
16 sincerely that I think in view of the fact that it is in
17 our Constitution and in states' constitutions that it
18 would drastically affect the State's finances, that it is
19 a serious matter and a matter of constitutional proportion.
20 I understand by way of humor that there is a
21 pool going around as to the number of votes by which this

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1 will pass or fail. I only say to you ladies and gentlemen,
2 "put your money on the green". (Laughter.)
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1 THE CHAIRMAN: Delegate Dukes.

2 DELEGATE DUKES: Spoken like a true

3 hypocrite. (Laughter.)

4 Mr. Chairman, I next yield two minutes to

5 Delegate Kirkland, who will explain to Delegate Fox Prince

6 Georges County is not the same as it was in 1938.

7 THE CHAIRMAN: Delegate Kirkland.

8 DELEGATE KIRKLAND: Mr. Chairman, certainly I

9 see no justification for the inclusion of such an article

10 in the Constitution. First of all, especially if it is

11 on the premise that we are helping the poor. I take this

12 because it seems like a great deal of emphasis was placed

13 on the fact that lotteries bear most heavily on the poor.

14 Let me tell you something,and I am a school teacher and

15 I worked at the race tracks. I can guarantee you that

16 many of those poor people found their way to the race

17 tracks. So if we are going to do something for the poor

18 people, I would say we ought to eliminate all gambling

19 because I think this is certainly the case.

20 On top of this, I hear a lot about bingo. I am

21 quite sure most of you belong to Republican or Democratic

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1 Clubs. I am quite sure that some of them could not
2 exist if it wasn't for the 50-50. I venture to say that
3 many of you have played the game 50-50.
4 The same thing is true about Boys Clubs. I
5 support the Boys Clubs, I support their activities, and
6 many of their money raising activities come from lottery
7 form activities.
8 So these are many of the reasons why I support
9 the exclusion of such an article.
10 THE CHAIRMAN: Delegate Sherbow.
11 DELEGATE SHERBOW: I yield four minutes to
12 Delegate Price.
13 THE CHAIRMAN: Delegate Price.
14 DELEGATE PRICE: Mr. Chairman, and ladies and
15 gentlemen, I don't want to rise in a tirade here. I
16 believe gambling is much like sex, very powerful, very
17 neutral, neither good nor bad, right or wrong, depending
18 on how it is used. I think for us to use this means to
19 raise money for the State of Maryland would be using this
20 impulse to further deteriorate, if not to prostitute,
21 society.

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1 I had to rise because I don't want us to reach
2 a conclusion without first considering from where this
3 whole idea comes, this ethic that we have. We have been
4 taught by our ancestors that we should not try to get
5 something for nothing. That if a man wants to get
6 ahead, if a state wants to survive, that the one sure way
7 for that man or the people of that state to get ahead and
8 to survive is by hard work, and for any group anywhere
9 to hold out to anybody the prospects of getting something
10 for nothing, I submit, is immoral in itself.
11 I only refer to the cancer that, of this type,
12 that has already got its tentacles in our society and I
13 think it can very well strangle us.
14 It concerns me that some people feel that the
15 old adage is true that in every way, every day, things are
16 getting better and better, and I do believe this.
17 I look at the history of art and I see art reached its
18 peak in the 1400's and 15th Century, in the Italian
19 Renaissance. We have great painters today but who can
20 we stand with D'Vinci and Michaelangelo? Everything just
21 does not automatically get better, better, and better every

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1 day in every way.

2 We have philosophers today who are not to be
3 deprecated, Bertrand Russell, Jacques Maritan but who
4 can we put beside Aristotle and Socrates and Plato who
5 lived 500 years before Jesus Christ. You say things do
6 not automatically get better and better every day in
7 every way. We have great religious writers today but who
8 can we put against Amos, Hosea, and Jonah who lived 2,700
9 years ago. The only area in which we have surpassed our
10 forefathers is the area of applied science. We have done
11 very well.

12 The issue before us today is not to be laughed
13 off the floor. It is to be very seriously considered. I
14 do not believe that every day in every way, things are
15 getting better and better. I think that we might well
16 apply this to the argument before us to put it into the
17 Constitution to prevent further erosion of society.

18 I say this from a point of view of morality
19 because I do not believe in superimposing my morals or
20 my principles upon society. But I say it because it is a
21 sound business thing, I think, to put it into the

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1 Constitution.

2 I want to say one thing more.

3 THE CHAIRMAN: You have a half minute.

4 DELEGATE PRICE: Thank you, sir. Delegate

5 Dukes mentioned he was a farm boy, that he didn't have any

6 vices. I am from up in the mountains,originally

7 mountaineers up there, coal miners, things like that, up

8 there where men are men and women are glad of it.

9 I just have to beg for another 30 seconds, sir,

10 because Delegate Dukes and some others have, if the folks

11 will excuse me, this reference, we talk about writing

12 a Constitution --

13 THE CHAIRMAN: Delegate Price, your time has

14 expired, unless you are granted additional time.

15 DELEGATE SHERBOW: I will grant the additional

16 time.

17 THE CHAIRMAN: How much?

18 DELEGATE SHERBOW: One minute.

19 THE CHAIRMAN: Proceed.

20 DELEGATE PRICE: I have to tell the story

21 because it helps me explain something. Delegate Dukes

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1 said he came to write a Constitution that will really serve
2 the people, the public. I often wondered what this meant.
3 Not being a farm boy, I don't know.
4 But one day last week Delegate Dukes invited
5 me to his farm, took my son down. He has fine cattle.
6 He showed us the farm, , they were breeding the cattle.
7 My son walked around the corner, said, Mr. Dukes, what's
8 happening here? Mr. Dukes, very embarrassed, said, well,
9 he is a bull serving the cow. Then I knew, sir, what we
10 are in danger of doing sometimes when we talk about
11 serving the public. (Laughter.)
12 THE CHAIRMAN: The unexpected sometimes happens
13 in this committee. (Laughter.)
14 Delegate Dukes.
15 DELEGATE DUKES: Mr.Chairman, before I yield
16 further time, I would like to say to Delegate Price I wish
17 to be firmly on record as being in favor of sex. Although
18 my capacity is extremely limited, my enthusiasm is
19 enormous. (Laughter.)
20 At this date, I know little about girls and
21 know very little about cows either.

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1 At this point, Mr. Chairman, I would like to
2 yield four minutes to Delegate Finch, who represents the
3 C.P.A.'s in this Convention. You all remember what
4 great proportion they have on the vote for the change of
5 name of the comptroller.
6 THE CHAIRMAN: Delegate Finch.
7 DELEGATE FINCH: Mr. Chairman, and fellow
8 delegates, I rise to support the Minority Report to the
9 effect that there should be no provision in the Constitution
10 concerning state-operated lotteries. As I understand our
11 role at this Constitutional Convention, we are to propose
12 to the people of Maryland a proposed Constitution, which
13 is not a prohibitive or restrictive one but one which is
14 flexible. This flexibility is absolutely essential if
15 we are not to bind the hands of the legislature with trying
16 to comply with the future demands of our citizens.
17 One such future demand may be where more sensible control
18 of what is already flourishing in Maryland and also with
19 lotteries. Within the past few months, the front pages
20 of our daily newspapers through their broad headlines have
21 informed us that gambling rackets grossing one hundred

1 million dollars a year are now operating in this state.
2 There is general agreement that the most difficult
3 problem confronting law enforcement agencies today is
4 the suppression of organized illegal gambling which far
5 outweighs legal gambling. The national illegal gambling
6 figure has been established at approximately fifty
7 billion dollars a year and is estimated that two of every
8 seven Americans are gambling regularly. During the
9 period of the Volstead Act, bootleggers were the treasurers
10 of the underworld. Today their successors are the backers
11 and pay-off men in the illegal gambling industries.
12 Generally speaking, the fight against this type organized
13 crime has been a losing one because the average bettor is
14 an otherwise law-abiding citizen who does not feel as if
15 he is doing anything criminal.
16 One answer to the problem is to regulate and
17 control gambling much more sensibly than we currently are
18 doing. Our present attitude is akin to that of elephant
19 hunting with a squirrel gun. Racketeers are not changing
20 at all. With only one chance in a hundred of being caught
21 in any given year, their job security and income is

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1 excellent. In the 1920's we had the Volstead Act. It was
2 an unenforceable statute which provided bootleggers with
3 funds to finance a criminal empire. That mistake was
4 corrected through legislation.
5 Quickly the underworld took advantage of
6 another society weakness -- the urge to gamble.
7 With the assistance of millions of our almost law-abiding
8 citizens, illegal gambling has become the backbone of
9 organized crime in America today. That backbone appears
10 to be unbreakable. Prohibition profits were meager compared
11 to the gambling profits of today. The why's are baffling
12 and the over-all picture exhibits little logic.
13 Many factors explain why we have such a
14 frustrating situation. Included are:
15 One, public participation in illegal gamgling;
16 Two, public indifference to the by-products of
17 illegal gambling;
18 Three, inadequate laws and inadequate enforcement
19 machinery;
20 Four, illegal gambling cases demand a lengthy
21 period of surveillance before search and seizure warrants

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1 can be obtained.

2 It is completely impossible for the Federal
3 or local police to combat, consistently, all of the illegal
4 gambling in any area over a period of time. The reason
5 is lack of personnel for enforcing this type of misdemeanor.

6 As general counsel to the Maryland Crime
7 Investigating Commission for the past five years, I have
8 worked closely with that agency's Executive Director,
9 Alvin Zumbrun, and I agree with his public statement
10 that "gambling in moderation is not injurious if the
11 racketeers are not keeping the profits --

12 THE CHAIRMAN: You have a little less than half
13 a minute, Delegate Finch.

14 DELEGATE FINCH: -- "and illegal gambling has
15 become one of the biggest businesses in Maryland today.
16 The outlets provided by the illegal gambling for the
17 propensity of people to gamble are more readily available
18 than those which the lawmakers have provided." I do
19 not think that you, fellow delegates, or I should place our-
20 selves in such a holy position as to think we must protect
21 the Maryland citizens from our elected legislature
representatives.

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1 THE CHAIRMAN: Your time has expired, Delegate
2 Finch.
3 DELEGATE FINCH: Thank you.
4 THE CHAIRMAN: Delegate Sherbow.
5 DELEGATE SHERBOW: I yield four minutes to
6 Delegate Chabot.
7 THE CHAIRMAN: Delegate Chabot.
8 DELEGATE CHABOT: Mr. Chairman, in New York
9 City budding politicians have been told for many years
10 they should find something they can praise about Israel,
11 something they can praise about Italy, something they can
12 praise about Ireland. For a while I thought we were going
13 off on that tangent here. Since all three of those states
14 have lotteries I am supposed to stake what little future
15 I have in my hand condemning the lottery nevertheless.
16 Mr. Chairman, the Minority have posed the
17 question we often heard on this floor. Is the matter
18 before us one of constitutional importance? This one
19 sentence of a dozen words we have before us is a limitation
20 upon the power of the General Assembly and at every level
21 of government in the state. Without this limitation, the

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1 power of the General Assembly and the power of 24 counties
2 would be sufficient to permit them to authorize what
3 amounts to a regressive tax. The provision,this provision
4 before us, restricts these powers. It is clear then that
5 the recommendation of the Committee on State Finance
6 performs a constitutional function. It is not exhortatory.
7 Is the lottery so outmoded a danger that we no
8 longer have to guard against it in our Constitution?
9 Regrettably, no. For many years a New York City
10 Republican Congressman has been urging Federal lotteries,
11 New York State has joined New Hampshire in deluding the
12 taxpayers by creating state lotteries. The siren song
13 of painless taxes is now being sounded even here as one of
14 our delegates so ably pointed out.
15 The danger of the state government or county
16 government creating the lottery should not be discounted
17 too much. It is clear then that the recommendation of the
18 Committee on State Finance guards against a potentially
19 real danger.
20 Mr.Chairman, we have been told the Legislature
21 ought to remain free to handle this matter. Yet all

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1 through this Constitution we have been picking and choosing
2 those areas in which we felt the legislature would be too
3 tempted to do something that we felt was improper. In
4 those areas which we felt would offer too great temptations
5 we have limited their powers to put a limit on their size.
6 We put a limit upon their power to raise their salaries.
7 We put a limit on their sessions. We put a limit on their
8 power to affect the structure of the Executive Branch,
9 limit on their power over the judicial branch and a limit on
10 their power to redistrict themselves.
11 We have been asked by the minority to dis-
12 regard our own history of more than a century on this
13 matter. We have been told to ignore the fact that 7 of
14 every 10 of our sister states have similar provisions in
15 their constitutions.
16 Mr. Chairman, those who disregard history are
17 condemned to relive it. We are determined that our children
18 will not have to relive the scandals and buying of
19 legislatures, the hoodlums and criminal organization
20 control, that characterized the history of Maryland's
21 lotteries and the lotteries of other states.

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1 THE CHAIRMAN: You have one half minute,
2 Delegate.Chabot.
3 DELEGATE CHABOT: We are not voting on an
4 academic philosophical question. The question clearly is
5 of constitutional importance. If you want to have
6 lotteries, you vote for the minority, if you want to
7 continue the prohibition on lotteries, vote yes to
8 sustain the committee.
9 THE CHAIRMAN: Delegate Dukes.
10 DELEGATE DUKES: Mr. Chairman, I yield seven
11 minutes to Delegate Koger.
12 THE CHAIRMAN: Delegate Koger.
13 DELEGATE KOGER: Mr.Chairman, ladies and
14 gentlemen, I support the minority report recommending
15 Constitutional silence on lottery because, one, it means
16 a deterrent to crime; two, it may be a source of income;
17 and, three, it is a prohibition that does not belong
18 in the State Constitution.
19 The gambling instinct is universal and cannot
20 be stamped out. Most of us play poker, pinochle, bingo
21 or something. It may be far better to have governmental

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1 lotteries, honestly run, than to leave them in the hands
2 of racketeers.
3 Yes, nearly everyone does a little gambling.
4 The Sunday Sun, November 12, headlined this story:
5 "Laurel, Maryland. Maryland's political
6 leaders acted like timid and unsuccessful gamblers
7 yesterday at the Washington, D.C., International Race
8 Course. Most of them bet on Damascus to win. The favorite
9 came in second. Among those present were Mayor-elect
10 D'Alesandro, Senators Tydings and Judge Brewster, Judge
11 Finan, and Attorney General Burch. Some bettors were
12 taking little chance. One man was asked by a friend
13 what horse he had bet on and he replied, You name the
14 horse, we probably have. Now this is gambling, but it is
15 out in the open. The poor man, the laborer who only
16 wants to bet 50 cents or a dollar on something doesn't have
17 time to take off from his work and go to the races. He
18 doesn't have a car, or if he has a car, he doesn't have
19 the money to park his car. He cannot bet $2 on every race.
20 Yet, if he bets 50 cents on tickets, this man's government
21 would make him an outlaw, brand him a criminal, and

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1 characterize what he does as dark and evil.

2 However, if he gives urge to his gambling

3 instincts, the same as Senators Tydings and Brewster,

4 Judge Finan, Attorney General Burch and Mayor-elect

5 D'Alesandro, his government condemns him and becomes an

6 unwitting partner in fostering vice, corruption and crime.

7 This lottery that collects $72 million a year for under-

8 world barons also corrupts and enmeshes our police and

9 office holders. Crime begets other crimes in terms of

10 drug addiction, murder, theft, fraud and prostitution.

11 Is illegal gambling the only danger in lottery

12 and numbers? No. Today, this money is being felt in

13 government, not in just lowly ward heelers, but in well-

14 organized, well-educated, well-oiled political machines.

15 Fellow delegates, they represent you today. They are

16 already electing themselves and others of their ilk to

17 high places. It is a nationwide pattern. The lotteries

18 are an untapped source of wealth, creating an uncontrolled,

19 unchecked web of crooked Midases.

20 There are other dangers. Racketeers are

21 infiltrating legitimate businesses. At least, President

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1 Johnson thinks so. He regards it as an emergency. On
2 June 29, 1967, he asked for the recruitment of business
3 and community leaders for a war on crime. He felt it must
4 be brought to life by the constructive support of an
5 informed and participating public.
6 The economic cost of crime is $25 billion a
7 year. People everywhere are concerned with the racketeer
8 who is putting big money in big business and making it
9 look legitimate.
10 Did we not learn a lesson from prohibition? Let
11 us leave out of our constitution this stumbling block so
12 that our children may not have to fall over it or even
13 have to go around it.
14 Here in Maryland, our cooks, barbers and
15 factory workers are playing $200,000 a day on lottery, just
16 like the race track gamblers -- trying to get something for
17 nothing. This is $72,000,000 a year that we do not tax.
18 Instead it goes to increase our tax burdens in terms of
19 crooked police, vice and political corruption. This is
20 $72,000,000 a year -- more than four times what we get
21 from real and personal property taxes -- more than four

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1 times what insurance companies pay the state; nearly
2 six times the tax on all horse racing, more than one
3 half as much as sales taxes; more than one half as much
4 as the entire federal receipts. It is enough to cover
5 one-third of the entire public educational budget and
6 nearly as much as we allow for the state's public welfare
7 program. Suppose a future legislature devised a plan to
8 use this public welfare program. $72 million for cancer
9 research or refining heart transplanting surgery
10 techniques? Would we want it said that we put this notable
11 project beyond its grasp by constitutional bungling?
12 Frankly, I think we are suckers. Why continue
13 to give up our rich source of revenue to the racketeers?
14 We don't know what is up ahead for our state. If we add on
15 to our Constitution the prohibition of horse racing as
16 we do lottery, we would lose $12,000,000. Imagine us
17 giving up the income from our race tracks. I say leave
18 the whole matter to the General Assembly.
19 Finally, this prohibition should not be
20 imbedded into the fundamental law of the state -- tying
21 the hands of future legislators. They may wish to consider

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1 such programs in the future and in the light of changing
2 circumstances. Then, if they need to, and public support
3 of a lottery may be mobilized, it is too difficult to
4 change once it has gone into the Constitution. The
5 laborious process of adding Constitutional amendments must
6 follow. They must win at every step, and we know a
7 racket-backed minority can block it. The minority can
8 thus rule and control.
9 The best constitution for the future, is not
10 what should be added, but what should be left out. Leave
11 out now provisions which might prohibit the legislature
12 from legislating. There is no constitutional prohibition
13 against fraud, prostitution, use of narcotics, betting
14 on horses and other sins -- why just lottery?
15 Thank you.
16 THE CHAIRMAN: Delegate Gleason.
17 DELEGATE GLEASON: Mr. Chairman, fellow
18 delegates, let me say in the beginning of my remarks that
19 I frankly cannot agree with the interpretation of this
20 prohibition that the Chairman of the Committee put on
21 but I do believe if the prohibition stays in the Constitution

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that if the legislature then excludes certain activities as not being lotteries, it really is up to the Court of Appeals to determine whether that standard is met or not and with that understanding, I do rise in support of the committee a majority of the committee recommendations.

I think there isn't any question that we all would agree that we are living in a time of changing values. I think that we are faced here with an issue that reflects in many ways considerations of changing values in connection with this proposition of gambling or no gambling in the state.

I think also the issue is really fundamentally clear for us. That issue is if this prohibition is excluded from this Constitution and if -- I think this is a big if -- this Constitution is thereafter approved by the voters, I would submit that within two years of this date this state will have a state lottery passed by the Legislature of Maryland. It will be on the statute books.

Then I think the question must be asked in each of our minds tonight if within less than four years after this state has paved the way for the abolition of slot

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1 machines we here facilitate a state lottery in this state,
2 the question has to be asked whether we have not put this
3 constitution in jeopardy. Much is said in the argument
4 about freeing the hands of the legislature to do its
5 will. I had always assumed the function of government,
6 Legislature being one of those branches, was to do the
7 public good and advance the public good. I do think that
8 it is something that each delegate here has to answer in
9 his own mind as to whether a statewide lottery is a
10 public good. I submit with humility as far as myself is
11 concerned, I do not think it is a public good.
12 I think that we should remember vividly the
13 tensions and strains that were existing in this state in
14 1961 and 1962 and 1963 when the slot machines were finally
15 abolished in Maryland.
16 THE CHAIRMAN: You have one half minute.
17 DELEGATE GLEASON: I think we have to ask our-
18 selves do we want to go through that kind of battle again?
19 There is another aspect of the problem that I think deserves
20 consideration. That is what we have already voted on to
21 share the powers of government with local government.

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1 Here we will have a state lottery on the statute books in
2 two years and are we going to be in any position to stop
3 any community in the State of Maryland from putting on
4 slot machines or any kind of gambling that the mind of
5 man can conceive? I doubt it. That is the issue you
6 are faced with. I hope you support the majority recommen-
7 dation.
8 THE CHAIRMAN: Delegate Dukes.
9 DELEGATE DUKES: Mr.Chairman, I yield two
10 minutes to Delegate Vecera.
11 THE CHAIRMAN: Delegate Vecera.
12 DELEGATE VECERA: Mr. Chairman, fellow delegates,
13 a few brief points here in support of the prohibition or
14 rather supporting leaving out of the Constitution this
15 lotteries business.
16 One, I don't think we are down here to protect
17 the General Assembly from the lobbyist pressures that are
18 placed on it as the majority would have us believe. Number
19 two, I am simply confused over construction of the word
20 lottery. Therefore, it might imply that bingos are to
21 be banned or other private gambling situations such as

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1 various charities formed. Therefore, I would just on the
2 question of confusion vote against it, Delegate Sherbow.
3 Third, some mention was made here of a point
4 that the lottery in the States of New York and Rhode
5 Island were not successful. I think these states have
6 not had an opportunity as yet to develop fully the lottery
7 system. As in every new situation, I think this takes a
8 specific amount of time in order to iron out the wrinkles.
9 I think this is exactly what happened in New York. The
10 reason why I am saying this, I spent some time in New
11 York this summer,practically all summer, except for one
12 day down here in Maryland, spent some time there during
13 that time they were in the process of selling tickets.
14 They seemed to have some difficulty in the advertising
15 and being able to advertise it and they also had difficulty
16 in obtaining places in which to sell the tickets.
17 THE CHIARMAN: You have a little less than a
18 half minute, Delegate Vecera.
19 DELEGATE VECERA: Thank you, Mr Chairman.
20 Also Delegate Gleason stated in two years the legislature
21 would, as a matter of fact, pass laws relating to lottery.

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1 I say this means the people, as a matter of fact, want
2 a lottery. I think I remember somewhere in school I
3 was taught that this, Delegate Gleason, is called democracy.
4 THE CHAIRMAN: Delegate Sherbow.
5 DELEGATE SHERBOW: Will you tell me, Mr.
6 Chairman, how much controlled time is left?
7 THE CHAIRMAN: I think eight minutes.
8 DELEGATE SHERBOW: I yield three minutes to
9 Delegate Darby.
10 DELEGATE DARBY: Mr.Chairman, ladies and
11 gentlemen, we have had quite a few humorous moments here.
12 I think that if we leave this prohibition out of the
13 Constitution, this state itself will be a joke in a few
14 years. We have heard Judge Sherbow say that possibly
15 probably within ten years we would have a lottery in this
16 state- Delegate James has talked about the fact that
17 legislature would undoubtedly allow a lottery. I think
18 the majority of the minority, all of whom have spoken
19 except possibly Delegate Koger, has agreed the lottery
20 is not a proper source of revenue. I think that we can
21 all agree to that. I don't think we should have a lottery.

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1 I think to make certain of this, we should vote for this
2 prohibition and keep it in the Constitution.
3 The fact is that in New York the lottery has
4 not lived up to expectation. The Congress itself
5 after March 31, as Judge Sherbow told us, will not allow
6 Federally insured banks to sell lottery tickets. This
7 was discussed in an editorial on November 16 in the
8 Baltimore Sun. Also on November 16 there was one of these
9 small articles that Delegate Armor gave to Delegate Dukes
10 to read. The article stated that -- in referring to the
11 New Hampshire lottery, the article stated the state-
12 operated New Hampshire lottery, poor idea to begin with,
13 is proving even worse in practice. Expenses are gobbling
14 52 per cent of gross revenue prompting some observers to
15 note an experienced racketeer could handle the lottery
16 for half that including police payoffs. The moral
17 though does not mean the job should be turned over to
18 private industry. It should certainly and simply be
19 abandoned.
20 THE CHAIRMAN: You have one half minute --
21 DELEGATE DARBY: There is no question that as

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1 Judge Sherbow also stated, a state lottery cannot
2 decrease illegal gambling so it is not a question of
3 taking some of this illegal money and using it as a good
4 source of revenue in this case. I think, therefore, that
5 there is no other choice we have except to keep this
6 prohibition in the Constitution.
7 THE CHAIRMAN: Delegate Dukes.
8 DELEGATE DUKES: I yield four minutes to
9 Delegate Scanlan.
10 THE CHAIRMAN: Delegate Scanlan.
11 DELEGATE SCANLAN: Mr.Chairman, and fellow
12 delegates, in several of my previous remarks to this
13 Convention, it has been my dubious pleasure to have
14 appeared to have opposed conservation, consumer protection,
15 been in favor of unethical legislators. No, I guess my
16 remarks will be misconstrued as a statement in support of
17 gambling on the part of the state, its political subdivisions
18 or other citizens. I assure you my position today is
19 in my mind at least consistent with the previous positions
20 I have taken in this Convention and in an attempt to keep
21 out of the Constitution the irrelevant, the trivial, the

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1 unenforceable.

2 It seems to me there are two issues presented
3 here today. Originally I thought there was only one,
4 the narrow issue we discussed before the Constitutional
5 Convention Commission. Namely, shall the present prohi-
6 bition in the Constitution which prohibits the state from
7 granting a lottery that is conducting a lottery itself,
8 or having private persons conduct it for it, should such
9 a prohibition be continued?

10 Now, there, I think, the issue is a fairly
11 simple narrow one. My own personal opinion is it is an
12 anachronistic prohibition that one perhaps is justified
13 in history in a day when people didn't trust their
14 legislature but the whole thrust of this Convention and
15 the whole reason of evolution of the history of this state
16 is the development of the legislature that we can trust.
17 If state lottery is as poor as the oponents say, I agree
18 they are at least on New Hampshire experience, if they are
19 that bad as revenue raisers, if they are, as my friend
20 Delegate Chabot said, a form of retrogressive taxation,
21 then I suppose the New York Legislature will soon abolish

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it. Our legislature hopefully would never adopt it. But to put it in the Constitution as thou shalt not, seems to me completely unnecessary.

However, the issue that disturbs me is the one that really evolved on the floor today in the question period. As I understand the explanation of the new language, suggested by the Committee on Finance, it would not only bar the legislature and the political subdivisions from conducting a lottery, but would also bar any private group from conducting whatever is classified as a lottery. And there is no question in my mind that bingo is a lottery. A very strong argument to that effect was made by my good friend Rufus King in Bender versus Anne Arundel County recently in the Court of Appeals, great majority of the state holds bingo is a lottery. I suggest any dog racing, bookmaking, off-track betting, raffles, prize grab machines, card games with betting, spinning wheel, pinball machines, and so forth, are lotteries.

Certainly in any intelligent definition of lottery all these categories of gambling activity would be prohibited in the Constitution. I am not debating the

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1 fact that maybe they should be prohibited but they should
2 be prohibited by the legislature which would have
3 flexibility to deal with the situation so as to permit
4 those forms of gambling which were thought tolerable and
5 to prohibit those forms which were thought not tolerable
6 but to put this provision in the statute with the legis-
7 lative history that has accompanied this as a result of
8 the debate today seems to me to really open the door, as
9 Delegate Finch put it, for the professional gamblers to come
10 in.

11 I agree with my friend Delegate Price that
12 perhaps the morals of society today are in some areas at
13 least in a process of disintegration but I suggest to
14 you nothing we put in any Constitution can stop that. In
15 the end the people -- the Weimar Republic had the
16 fanciest phrases about democratic procedure but it
17 shortly was destroyed.

18 THE CHAIRMAN: Your time has expired, Delegate
19 Scanlan.

20 DELEGATE SCANLAN: I urge you then to take
21 this opportunity where you failed several times in the

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1 past to eliminate something, that remedy has no place in
2 the Constitution.
3 THE CHAIRMAN: Delegate Sherbow.
4 DELEGATE SHERBOW: I yield three minutes to
5 Delegate Mentzer.
6 THE CHAIRMAN: Delegate Mentzer.
7 DELEGATE MENTZER: Mr.Chairman, I do not believe
8 we are being asked to vote against bingo. I believe we
9 are considering whether we should vote against the
10 conducting of a lottery by the state or its political
11 subdivisions as a source of governmental revenues and I am
12 against this. It is quite ironic that the rock-ribbed
13 State of New Hampshire was the first in this century to
14 have a state law for lotteries. New Hampshire has always
15 projected a state image of thrift and self-reliance and
16 virtue.
17 They did this admittedly as a means of shifting
18 their tax burden to other taxpayers in other states, and
19 they have not been successful.
20 The proponents of the lottery law in New
21 Hampshire said they would raise four million dollars. Never

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did they raise three million dollars and now they are not even raising two. The law was passed in '63, the figures for 1964 were $2,700,000. They dropped in 1965 to $2,500,000. And last year in 1966 the state distributed to the public schools of New Hampshire from the lottery revenue $1,850,000.

I do not think it has worked in New Hampshire, I do not think it will work in Maryland and I urge you to uphold the committee recommendation.

THE CHAIRMAN: Delegate Dukes.

DELEGATE DUKES: Mr. Chairman, I will reserve two minutes for myself and yield the rest of my time.

THE CHAIRMAN: Delegate Sherbow, do you have anyone else to whom you desire to yield?

DELEGATE SHERBOW: No, Mr. Chairman.

THE CHAIRMAN: Delegate Dukes.

DELEGATE DUKES: I believe that if the committee does not retreat, someone in this body will offer an amendment, which will weasel down the present proposal so we can protect the churches, protect all the people back home who may not like the vote for the present proposals.

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1 I suggest to you if such an amendment comes along, it is
2 not better than what we have. That which we have before us
3 now is at least a clear-cut issue. Judge Sherbow stood
4 on his feet and he said he was against lotteries and he came
5 out and proposed a bar on not only state lotteries and
6 political subdivision lotteries, but all lotteries.
7 If he said all gambling, I would probably support it
8 myself.
9 I suggest to you, however, that if an amendment
10 comes along that restricts this back to the states and
11 political subdivisions, we then have a situation where
12 we don't know what lotteries are. It might be bingo.
13 Therefore, because some of our friends use bingo,
14 we better protect the users of bingo.
15 I submit to you purely and simply, Delegate
16 Scanlan framed the issue. This is not a matter that does
17 not belong in the Constitution. To come along and meet it
18 squarely in the Constitution or meet it on the fringe of
19 the Constitution or to weasel all around to protect the
20 people back home,none of these is fit for the type of work
21 this Convention has been doing.

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1 I urge you to vote against the committee
2 recommendation.
3 THE CHAIRMAN: Delegate Sherbow.
4 DELEGATE SHERBOW: Do I have any time left?
5 THE CHAIRMAN: You havethree and a half minutes.
6 DELEGATE SHERBOW: I shall try not to duplicate
7 what has been said but inevitably I think we must. I
8 simply ask you to take these items into consideration.
9 When a governor of one of the New England states says that
10 repeal of this lottery ban will open up the possibility
11 not only of a state-run lottery, but lotteries conducted
12 by local government and private operators that I consider it
13 as being worse than the Constitution we have got and urge
14 the Constitutional Convention not to submit it to the
15 people for fear it would be overwhelmingly defeated,
16 this should be a matter for you to consider.
17 With respect to the opinion as to what is
18 lottery and whether bingo is included, I do not have
19 anything in the way of a legal opinion for you except the
20 opinion of Judge Sachs in the Circuit Court of Anne
21 Arundel County who in a lengthy opinion ruled bingo is not

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1 lottery.

2 I do not have anything for you except the
3 opinionof Judge Evans, Matthew Evans, who in a lengthy
4 opinion in the Circuit Court of Anne Arundel County,
5 ruled bingo is not lottery.

6 What I am saying to you is that the issues here
7 are very, very simple. I urge you, I urge you as
8 seriously as I know how that this is one of the issues of
9 transcendent importance to you and that you support, I
10 urge you, the report of the committee. It is the right
11 decision, I believe, to make.

12 THE CHAIRMAN: Under the debate schedule, there
13 is time available for uncontrolled but limited debate and
14 this would also be the appropriate time for any amendments.
15 In order to decide whether to continue now and take a
16 vote before recess, the Chair would like to inquire whether
17 there are any other delegates who would like to speak on
18 this question, one side or the other. Just stand up if there
19 are.

20 Very well. There is 30 minutes time allowed.
21 And I don't think we should attempt to do that before the

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1 dinner recess. I think I should make this announcement
2 to you, however. I understand that there is at least
3 one and perhaps there are two or maybe more amendments which
4 may be offered. The chair has been asked whether it
5 would be possible to submit the present recommendation
6 to a vote and if the vote was against the recommendation,
7 that is, as to a disapproval, would it then be possible
8 to submit an amendment? The Chair has indicated that
9 under the rules under which the Committee of the Whole
10 is operating, this would not be possible. But the same
11 end could be achieved, if the committee wanted to, by
12 proceeding to take a vote on this issue and if the vote
13 was against the committee recommendation, to move for a
14 reconsideration of that vote in order to offer an
15 amendment.
16 The only other alternative the Chair sees open
17 to the sponsor of the amendment would be to offer the
18 amendment at the beginning of the uncontrolled debate.
19 You would then have a vote on the amendment before you had
20 a vote on the committee recommendation. With that state-
21 ment to the sponsors or would be sponsors and to the

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1 Committee of the Whole, I can let the matter rest over
2 the recess unless there is a parliamentary inquiry with
3 respect to the announcement just made.
4 Delegate James.
5 DELEGATE JAMES: Point of inquiry on procedure.
6 Why woldn't it be possible when the debate, the committee
7 report is concluded, assume for the purpose of argument
8 that the amendment were defeated, or the committee report
9 were defeated, isn't the article still open for considera-
10 tion and wouldn't it --
11 THE CHAIRMAN: It would not then be before
12 us. The committee recommendation would then be disapproved.
13 The only other course open other than the one the Chair
14 indicated would be the long, tedious course of proceeding
15 through committee again because proposals must come to
16 the floor either through the means of committee recommenda-
17 tions or delegate proposals or amendments and in this
18 situation we have nothing to amend. Delegate James.
19 DELEGATE JAMES: At the end of the consideration
20 of the article in the form of a section.
21 THE CHAIRMAN: Under the debate schedule under
which we are operating here, each of these recommendations

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1 is to be considered separately and voted on separately.

2 I think the same result could be achieved

3 quite obviously if the motion for reconsideration were

4 made, the mover would have full opportunity to explain

5 the purpose and to explain the amendment he wanted to offer.

6 If the Committee of the Whole wanted to consider it, they

7 could do so. Delegate James.

8 DELEGATE JAMES: In consideration of the fair-

9 mindedness of this group, I am sure we will all cooperate

10 in this procedure.

11 THE CHAIRMAN: The Chair recognizes Delegate

12 Dukes.

13 DELEGATE DUKES: Mr. Chairman, could we also

14 reach the question of a vote on this initial issue if we

15 offer an amendment to delete the section?

16 THE CHAIRMAN: I think that is equivalent to

17 simply a vote of disapproving the committee recommendation.

18 I see no purpose to be served by it. The Chair recognizes

19 Delegate Powers.

20 DELEGATE POWERS: Mr.Chairman, I move the Committee

21 of the Whole rise and report that it has not concluded

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1 consideration of the committee recommendation SF2.

2 THE CHAIRMAN: Seconded.

3 (The motion was duly seconded.)

4 THE CHAIRMAN: All in favor, signify by saying

5 Aye; contrary, No. The Ayes have it. So ordered.

6 (The mace was replaced by the Sergeant at Arms.)

7 (Whereupon, at 6 p.m., the Committee of the

8 Whoel rose, and the Convention reconvened.)

9 THE PRESIDENT: The Convention will please come

10 to order.

11 On behalf of the Committee of the Whole, the

12 Chair reports it has had under consideration Committee

13 Recommendation No. SF-2 and still has it under consideration

14 and desires leave to sit again. Are there any announcements

15 by committee chairmen? If not, any delegates present

16 now, not present at roll call, may indicate their presence

17 on the supplemental roll call. The Clerk will record the

18 supplemental roll call. The Clerk will record the roll

19 call.

20 Any further announcements? Delegate Stern.

21 DELEGATE STERN: Mr. President, I would like to

1 take this opportunity to inform the committee that
2 Delegate Storm's wife was operated on day before Thanks-
3 giving, returned home yesterday, is doing fine. All send
4 her their best wishes.
5 THE PRESIDENT: Thank you. I might say,
6 Delegate Storm, that I am quite sure all the delegates
7 of the Convention realize full well the strain under
8 which you have been operating in the past few days and
9 they are with you one hundred per cent.
10 Delegate Marion.
11 DELEGATE MARION: Mr.Chairman, I don't believe
12 Delegate Mason was here when the roll call was taken
13 earlier. He has been forced to return toBaltimore.
14 He has been here during most of the afternoon.
15 THE PRESIDENT: TheClerk informs me he noted
16 Delegate Mason's presence this afternoon.
17 Any other announcements?
18 Delegate Powers.
19 DELEGATE POWERS: Mr. President, I move we
20 adjourn until 7:30 p.m. tonight.
21 (The motion was duly seconded.)

1 THE PRESIDENT: All in favor, indicate by
2 saying Aye; contrary, no.
3 The Ayes have it. So ordered.
4 (Whereupon, the Convention adjourned at 6:03
5 p.m. to reconvene at 7:30 p.m. the same night.)
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1 E V E N I N G S E S S I O N

2 December 4, 1967 - 7:40 p.m.

3 THE PRESIDENT: The Sargeant at Arms will clear

4 the aisles and close the doors.

5 The Convention will please come to order.

6 The Delegates will please take their seats.

7 Roll call.

8 (Whereupon, the roll was called.)

9 Have all Delegates answered roll call?

10 The Clerk will record the roll call.

11 There being a quorum present, the Convention is

12 in session.

13 The Chair recognizes Delegate Powers, Chairman

14 of the Committee on Calendar and Agenda.

15 DELEGATE POWERS: Mr. President, I move that the

16 calendar be amended so that we may now consider Committe

17 Report Number C & A-1 and Resolution 19 to which this is

18 related.

19 THE PRESIDENT: Is there a second?

20 (Whereupon, the motion was seconded.)

21 THE PRESIDENT: All in favor signify by saying

1 Aye, contrary No. The Ayes have it and it is so ordered.
2 The calendar is amended to consider C & A-1 at this time.
3 The Chair recognizes Chairman Powers.
4 DELEGATE POWERS: The C & A-1 is on everyone's
5 desk. The report recommends the adoption of Delegate
6 Chabot's Resolution Number 19 as amended. This Resolution
7 simply extends the session of this Convention to and
8 including January 12, 1968. We have, as I say, recommended
9 the adoption of it with amendments. All we did was to bring
10 the "whereas's" in the Resolution up to the present date
11 from November 7 when the Resolution was offered and made
12 one or two technical changes. We had some fear and
13 trepidation when we attempted to make technical changes in
14 Delegate Chabot's Resolution, but I am pleased to say that
15 Delegate Chabot concurs in the amendment as it now is and
16 I therefore move the adoption of the amendment to Resolution
17 Number 19.
18 THE PRESIDENT: The Chair understands that you
19 move as a substitute for Resolution 19 the language appearing
20 on page 2 of the Committee Report beginning on line 17 and
21 continuing to line 32?

1 DELEGATE POWERS: That is correct.

2 THE PRESIDENT: The Clerk will read the Resolution

3 as amended.

4 MR. QUILLEN: A Resolution to extend the session

5 of this Convention to January 12, 1968.

6 Whereas the enabling act fot this Convention

7 (L. 1967, c.4, Sec. 10) provides that "the Convention by a

8 vote of the majority of the whole number of delegates [may

9 extend] the session of the Convention to a date not later

10 than January 12, 1968"; and

11 Whereas it has been made abundantly clear that the

12 work of this Convention progably cannot be completed by

13 December 12, 1967, except by unreasonable limitations upon

14 orderly and adequate consideration of the provisions of our

15 proposed fundamental document; and

16 Whereas the extension proposed herein seems

17 necessary for the Committee on Calendar and Agenda to plan

18 for a Convention extending past December 12, 1967; and

19 Whereas if this Resolution is adopted the

20 Convention can and should adjourn sine die before January 12,

21 1968, if its work is concluded before that date, now

1 therefore be it

2 RESOLVED that the session of this Convention be

3 extended to January 12, 1968.

4 THE PRESIDENT: The question arises to substitute

5 the amendment in place of the original Resolution. It has

6 been seconded. Are you ready for the question?

7 The question arises on the motion to substitute

8 the amendment on the original Resolution. A vote Aye is a vote in

9 favor of the substitution and a vote No is a vote against.

10 Cast your vote. Has every Delegate voted? Does

11 any Delegate desire to change his vote?

12 The Clerk will report the vote.

13 There being 104 votes in the Affirmative and

14 none in the Negative, the motion is carried, the Amendment

15 adopted and the substitution made.

16 The question arises on the adoption of Resolution

17 Number 19, as amended.

18 Is there any discussion? A vote Aye is a vote

19 in favor of Resolution 19, as amended, a vote No is a vote

20 against. Cast your vote.

21 Has every Delegate voted? Does any Delegate

1 desire to change his vote?

2 The Clerk will record the vote.

3 There being 110 votes in the Affirmative and none

4 in the Negative, Resolution 19, as amended, is adopted.

5 The Chair recognizes Delegate Powers, Chairman of

6 the Committee on Calendar and Agenda.

7 DELEGATE POWERS: Mr. President, I move that the

8 Convention resolve itself into a Committee of the Whole for

9 the purpose of resuming consideration of the Orders of the

10 Day.

11 DELEGATE JAMES: Seconded.

12 THE PRESIDENT: All in favor signify by saying

13 Aye, contrary No.

14 The Ayes have it. The Committee of the Whole will

15 please come to order.

16 (The mace was removed by the Sergeant at Arms)

17 (Whereupon, at 7:50 p.m. the Convention resolved

18 itself into a Committee of the Whole.)

19 THE CHAIRMAN: The Committee of the Whole will

20 please come to order.

21 We will resume consideration of Recommendation

1 SF-2. We are now proceeding into uncontrolled but limited
2 debate for 30 minutes. The Recommendation is open to amend-
3 ments. Are there any amendments?
4 Delegate White.
5 DELEGATE WHITE: Mr. Chairman, I rise on a point
6 of personal privilege.
7 THE CHAIRMAN: State the privilege.
8 DELEGATE WHITE: I would like you to recognize
9 in the rear of the gallery, Anthony Ward, Treasurer of the
10 Baltimore Branch of the National Alliance of Postal and
11 Federal Employees, his wife and three sons and guest. I
12 hope that we can make them welcome. (Applause.)
13 THE CHAIRMAN: Are there any amendments to be
14 submitted to Committee Recommendation SF-2? If not, we will
15 proceed to debate the Recommendation.
16 Are there any Delegates who desire to speak in
17 favor of the Committee Recommendation?
18 Delegate Marvin Smith.
19 DELEGATE M. SMITH: Mr. Chairman, I had an amend-
20 ment. I thought somebody else was going to put one in. It
21 might be more apropos.

1 THE CHAIRMAN: The Chair has been informed that
2 the sponsor of the amendment will offer it at a later time
3 should it become necessary.
4 I mean by that that as the Chair understands it,
5 if the Committee Recommendation is disapproved, there would
6 be a motion to reconsider for the purpose of offering amend-
7 ment. If it is approved, the amendment will not be offered.
8 At least, that is what the Chair has been informed. . Any
9 Delegate desire to speak in favor of the Recommendation?
10 Delegate Gallagher.
11 DELEGATE GALLAGHER: Mr. Chairman and Ladies and
12 Gentlemen of the House, I should like to share with the
13 Committee of the Whole a story of an early 19th century
14 Maryland lottery which involved the authorization in 1804
15 by the General Assembly for a lottery, the purpose of which
16 was to use the proceeds to commence the construction of what
17 is now the oldest capital cathedral in North America. After
18 the lottery tickets were duly sold and the drawing was held,
19 it was announced that the winner of the lottery was the
20 Archbishop of Baltimore, John Carroll and that is a very
21 effective way of running a lottery, I might say. I rise

1 simply to say this. I don't think that this is an issue
2 that we ought to get overcharged about or to emote a great
3 deal about but my thinking about the matter has changed
4 somewhat over the past few months and I do think the
5 tendency of public officials to lead people down the garden
6 path to believe that the fiscal panacea is the lottery, is
7 one we ought to give some consideration to. I believe the
8 last refuge of those who would delude the people that they
9 don't have to pay their fair share of the taxes is the
10 argument that we should have a lottery. I think it has been
11 disproved here in the United States. It is not the kind of
12 thing that we ought to let Maryland run headlong into. I
13 think it is the kind of decision that ought to be made
14 soberly and upon reflection and I think with the rise in
15 taxes and the tendency of the people to look for an easy
16 way that this is too attractive and I submit that in reality
17 we ought to put this prohibition in the Constitution because
18 it does mean that it could be accomplished through a
19 constitutional amendment. But it would also mean that it
20 would be done after considerable reflection, thought and
21 debate.

1 Now, I want to make this perfectly clear. I don't
2 care how the Court of Appeals should decide the question of
3 whether or not a Bingo is a lottery and for my own part, it
4 would make no difference whatsoever if the prohibition
5 against the lottery should be extended to include Bingo. I
6 think the magnitude of the issue is far greater than whether
7 or not a Church or a Fire Department can use Bingo to raise
8 money and I don't think anybody came down here with a mandate
9 from their Fire Department or from their Church to say
10 Bingo and because of that, I am perfectly willing to say
11 that I support this Majority Report. I intended to vote for
12 it and I ask those similarly saturated to consider doing
13 likewise.
14 THE CHAIRMAN: Any other Delegate desire to speak
15 in opposition?
16 Delegate Hardwicke.
17 DELEGATE HARDWICKE: Mr. Chairman, I noted in the
18 preliminary material prepared by the Constitutional
19 Convention Commission that the following relates to testimony
20 before the Committee that was considered in the lottery on
21 August 15, 1966 and I would like to read excerpts from that

1 testimony, if I may.

2 The Committee took testimony on the lottery

3 question on August 15, 1966. It invited Mr. Hyman Pressman,

4 Comptroller of the City of Baltimore and others.

5 The Committee also received a written communica-

6 tion from Francis X. Gallagher, Counsel for the Roman

7 Catholic Diocese in Maryland. Mr. Gallagher expressed no

8 opinion on merits but said it was the type of theory that should be

9 left to the State legislature. I would assume that since

10 then, Delegate Gallagher has changed his mind.. It seems

11 to me that a vote for the Committee Recommendation requires

12 a great deal of knowledge about lotteries and that Members

13 of this Convention have not had access to knowledge one way

14 or the other.

15 The question before us really is do we, forever,

16 prohibit lotteries in this State with a constitutional ban,

17 And to make the decision to prohibit lotteries requires

18 evidence, testimony and it is a controversial question and I

19 am not prepared to say whether they are good or bad, but I

20 say we don't have the evidence before us to make the

21 prohibition. It seems to me that this is strictly a

1 legislative matter. It requires witnesses, it is
2 controversial and by taking it out of the Constitution, you
3 leave it for legislative determination. It is not the
4 apparent kind of evil obvious on the face of it, a per se
5 evil which should be banned by the Constitution. Therefore,
6 I urge you to leave this Constitution silent on the subject
7 and let the legislature consider it from time to time.
8 After all, if you vote to keep the ban in the Constitution,
9 you are making a decision which we are not qualified to
10 make. By leaving it out of the Constitution, you permit
11 the legislature to do it with evidence and testimony.
12 THE CHAIRMAN: Any other Delegate desire to speak
13 in favor?
14 Delegate Pullen.
15 DELEGATE PULLEN: Mr. Chairman, I shall vote for
16 the proposal for three reasons:
17 First, I know the history of lotteries in this
18 and other states and why the prohibition was put in the
19 Constitution of 1867, Mr. Chairman. I think also that
20 removing this provision from the Constitution is a tacit
21 statement or agreement that we intend to open the flood gates

1 to lobbyists and similar devices, and

2 Too, I have seen the effect of lotteries on

3 children in South America and other countries and it wasn't

4 good.

5 THE CHAIRMAN: Any other Delegate desire to

6 speak in opposition?

7 Delegate Kosakowski, do you desire to speak in

8 opposition?

9 DELEGATE KOSAKOWSKI: Yes.

10 THE CHAIRMAN: You may proceed.

11 DELEGATE KOSAKOWSKI: Mr. Chairman and Delegates

12 to this Convention, I have heard a great deal from the

13 reformers of this Convention speak about reforming and about

14 making a new,modern Constitution and yet believe me this is an

15 antiquated provision in this Constitution.-

16 My friend, Delegate James, is an astute political

17 figure and I will say to Delegate James he shouldn't have

18 any fear, and to Delegate Gleason, don't have any fear that

19 the legislature is going to pass a lottery in two years. It

20 is tough getting a lottery through the legislature. We are

21 not here to legislate. Let us be practical about this. You

1 have to get it through the House and the Senate the same
2 way, and then there is the Governor's veto. What is the
3 fear to let the public have a voice in their government?
4 What moral issues are we going to place in
5 this Constitution? Let me tell you something to be
6 practical here. We are going to have an election on this
7 Constitution in May. Income Tax time is going to be over
8 by April the 15th. It will be very fresh in the minds of
9 the electorate when they see what we have already passed
10 here. No fiscal footnotes. What costs will we have?
11 Non-contributory pensions to judges and wives, increased
12 costs to legislators, and increased costs to the entire
13 new governmental structure. When I came here as a former
14 delegate for 20 years, the passage of a lottery was not
15 that easy.
16 This will be an issue in the next election. It
17 is not a constitutional matter. It belongs to the people
18 to decide with the duly elected representatives of the
19 legislature and I hope that this amendment rather than the
20 Recommendation be defeated.
21 THE CHAIRMAN: Delegate Neilson.

1 DELEGATE NEILSON: Mr. Chairman, I move that
2 the volume is tremendous on this microphone. I will
3 lower my voice.
4 I rise to speak in favor of the Recommendation
5 of the Committee. I would like to direct remarks made
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1 earlier by Delegate Sherbow, rather than take the time for
2 that I, for one don't want to rest the future of the State
3 of Maryland, particularly my children, on whether we have
4 a good gambling interest to put them through school or to
5 give them the things that they need. I would rather pay
6 my way by taxes as I think most of you delegates would want
7 to do.
8 I don't need a lot of witnesses to come down and
9 tell me whether I should have gambling or not have gambling.
10 I am firmly convinced that lotteries and gambling interests
11 bring into the State an element of people that I don't par-
12 ticularly care for. I note that we have had in our Consti-
13 tution in the past a prohibition against lotteries. I see
14 no reason to take it out of the State and I will vote in
15 favor of the report.
16 THE CHAIRMAN: Any other Delegate desire to
17 speak in opposition?
18 Delegate Bard, do you desire to speak in favor?
19 DELEGATE BARD: I shall wait.
20 THE CHAIRMAN: Delegate Child, do you desire to
21 speak in favor?

1 DELEGATE CHILD: Mr. Chairman.

2 THE CHAIRMAN: Delegate Child.

3 DELEGATE CHILD: Mr. Chairman, and distinguished
4 Delegates to the Committee, I have tried to keep silent
5 when I don't know what I am talking about, but I do know
6 something about this gambling racket, not because I was in
7 it, but because I was the victim of it. But I was States
8 Attorney of my county some 40 years ago. I found the
9 county full of slot machines. I ordered them out and I
10 had a good sheriff and a good deputy sheriff and they stayed
11 out but I spent half of my time listening to the gambling
12 crowd offering me money, offering me this, that and the
13 other thing to let them run.

14 I found out a lot about it. They can sell them
15 any way they want to. They can plug the jackpots so they
16 won't overflow. You say that is not lottery, that is
17 gambling but the lottery is gambling, too.

18 I merely want to say this, that when I was in
19 law school I learned a phrase that fraud vitiates every-
20 thing that it permeates and I say that gambling contami-
21 nates everything and everybody and every community and I
speak of whether it is legal gambling or illegal gambling

1 and I say that in my opinion and as far as my vote goes,
2 I support the recommendation of the Committee to let the
3 ban stay in the Constitution as it has done for almost
4 150 years.
5 It would relieve the Legislature from being
6 pestered by the gambling industry that wants to muscle in
7 and once they get in, believe me, you will never get them
8 out.
9 I am for the recommendation of the Committee.
10 THE CHAIRMAN: Any other delegate desire to
11 speak in opposition to the recommendation?
12 (Cries of Question.)
13 THE CHAIRMAN: Ready for the question?
14 The Clerk will ring the quorum bell. While we
15 are waiting for that, the Chair has the following announce-
16 ment: A Fairlane automobile is parked on the Convention
17 parking lot with lights burning, license EH-3956.
18 The question arises on the approval of Committee
19 Recommendation SF-2, a vote Aye is a vote in favor of the
20 approval of the recommendation. A vote No is a vote against
21 the Committee Recommendation.

1 Cast your votes.

2 Has every delegate voted?

3 Does any delegate desire to change his vote?

4 The Clerk will record the vote.

5 Delegate Boyce, is your vote registered?

6 DELEGATE BOYCE: It is working again, sir.

7 THE CHAIRMAN: Was your vote recorded?

8 DELEGATE BOTHE: I am not sure.

9 THE CHAIRMAN: The chart shows you as not voting.

10 DELEGATE BOTHE: My vote was negative.

11 THE CHAIRMAN: It will be so recorded.

12 There being 75 votes in the affirmative and 53

13 in the negative, the recommendation is approved.

14 The next item for consideration is Committee

15 Recommendation SF-3.

16 Delegate Sherbow.

17 DELEGATE SHERBOW: Mr. Chairman, the report on

18 State Finance and Taxation, SF-3, will be presented to the

19 Committee of the Whole by its Vice Chairman, Delegate Case.

20 THE CHAIRMAN: Delegate Case.

21 DELEGATE CASE: Mr. Chairman.

1 THE CHAIRMAN: Delegate Sickles.

2 DELEGATE SICKLES: I wonder if I could ask the
3 Chairman of the Committee of the Whole to yield for a
4 question. I know it is a bit irregular and a bit out of
5 order, but I can assure you it will take but just a few
6 seconds because I want to clarify something in my own
7 mind what happened as to SF-2. I have to ask unanimous
8 consent to proceed out of order.

9 THE CHAIRMAN: State the question.

10 DELEGATE SICKLES: Earlier, when Delegate
11 Gleason asked Chairman Sherbow a question I had the dis-
12 tinct impression that Delegate Sherbow said for the record
13 that in his opinion the colloquy and comments and questions
14 on the answers on the floor perhaps would not have too much
15 effect on the court's decision as they looked to the
16 intention of this body. This may not be exactly what he
17 said. It seems to me that this would be the implication.
18 I do not recall whether you were in the chair or not. At
19 least I feel that I ought to raise the i-sue so that it
20 would be clarified, because throughout this discussion, in
21 some point some court may be looking to determine what the

1 intent of the Convention was and I think this is important.
2 I ask the Chairman if he does not concur in the fact what
3 we do say and what the questions are and answers are will
4 not have some effect in determining the words that we pass.
5 THE CHAIRMAN: The question posed by Delegate
6 Sickles is a little difficult for the Chair to answer
7 unless I construe the question in its very narrow sense.
8 The question is that the statements of intent by this
9 Convention would have some influence on a determination of
10 the court as to the meaning of the words used. I think
11 that can undoubtedly be answered in the affirmative but I
12 don't think it is a true answer to the question.
13 It will, indeed, have some influence, but how
14 much influence is another matter. I think that the two
15 principles which must be borne in mind in considering
16 this question and which any court would undoubtedly keep
17 in mind is that the intent of the Committee of the Whole
18 and of the delegates expressed in debates as to the purpose
19 of the provision under consideration or of the language
20 used is indeed entitled to great weight but the court must
21 also consider the fact that the people in voting on the

1 adoption of the Constitution are entitled to assume that
2 ordinary words are used in their ordinary meaning and that
3 this cannot necessarily be controlled completely by state-
4 ments of intent of the delegates to the Convention as to
5 the meaning they intended.
6 I think, therefore, the question is easy to
7 answer to say that some effect will be given to the state-
8 ments on the floor. I think it is very difficult to formu-
9 late any statement as to how much effect and whether it
10 will be given overriding effect. I think it is almost
11 impossible for anyone to say. Let me say, also, and I
12 assume in addressing this question to the Chair you are
13 asking only for a personal opinion of the Chair. I have
14 no ability to give any kind of an official opinion to this
15 question and I am sure you understand.
16 THE CHAIRMAN: Delegate Sickles.
17 DELEGATE SICKLES: I think the Chair is respond-
18 ing and I am perfectly satisfied with your explanation.
19 THE CHAIRMAN: The Chair recognizes Delegate
20 Case to present Committee Recommendation SF-3.
21 Delegate Scanlan.

1 DELEGATE SCANLAN: Mr. Chairman.

2 THE CHAIRMAN: I am sorry, Delegate Scanlan.

3 DELEGATE SCANLAN: In explaining the procedure
4 that would be open after we came back from the dinner
5 hour, you said it would be possible after the vote on the
6 Commission Recommendation that a motion for reconsidera-
7 tion could be offered and the applicant for the motion for
8 reconsideration could explain the purpose of the motion
9 for reconsideration.

10 THE CHAIRMAN: That is true.

11 DELEGATE SCANLAN: I would like now to move that
12 the vote be reconsidered. I have not in my possession the
13 specific motion that I would like to offer but I have seen
14 it. Specifically as I understand the situation, we have
15 adopted the Commission Recommendation which was changed
16 orally during the discussion and was never read back by the
17 Chair. I don't know exactly what I voted on.

18 THE CHAIRMAN: You said Commission Recommendation.
19 You mean Committee Recommendation.

20 Delegate Scanlan.

21 DELEGATE SCANLAN: Committee Recommendation.

1 What we passed is that lotteries shall not be
2 authorized by the State or its political subdivisions.
3 THE CHAIRMAN: That is correct.
4 DELEGATE SCANLAN: In the discussion of that
5 amendment there were those of us I think that thought that
6 only meant that the State and political subdivisions
7 would be barred from authorizing lotteries to be conducted
8 by the State or the political subdivisions.
9 There were others that voted either for or against
10 the amendment because they thought it went much further than
11 that because they thought it prohibited lotteries, whatever
12 that term may mean, from being conducted by any private
13 group that had to receive a license or commission from the
14 State or its political subdivisions and I believe that was
15 the issue to which Delegate Sickles referred in his question
16 to the Chair.
17 Therefore, with the request of the people who
18 drafted the motion even if they have no faith in it, if
19 the reconsideration prevails, I would offer a motion that
20 lotteries will not be conducted by the State or political
21 subdivisions for the purpose of raising revenues. That
would make it clear that private groups whether they be

1 fire departments, churches, Elks, or Rotary, may conduct
2 gambling games which are not declared illegal. For that
3 purpose I move that the previous vote be reconsidered.
4 THE CHAIRMAN: Delegate James.
5 DELEGATE JAMES: Second.
6 THE CHAIRMAN: Several times you referred to a
7 motion to be offered by others the exact text of which you
8 don't have. I assume you mean amendment to be offered by
9 others.
10 Delegate Scanlan.
11 DELEGATE SCANLAN: I do and I now have it in
12 my possession.
13 It would read, "If the vote on the Committee
14 Recommendation was reconsidered" --
15 THE CHAIRMAN: Just a second, is that the amend-
16 ment marked B?
17 DELEGATE SCANLAN: No, it is marked A.
18 I will read it.
19 THE CHAIRMAN: If the Chair can identify it, we
20 can have copies placed so the delegates can be informed
21 about the matters about which you speak. Is it the one

1 marked A or the one marked B.

2 Delegate Scanlan.

3 DELEGATE SCANLAN: I have the one marked A.

4 Maybe Delegate James is about to slip me the one marked B.

5 (Laughter.)

6 Well, the substance of both of them is similar,

7 I would move that if the motion for reconsideration is

8 successful --

9 THE CHAIRMAN: Which one are you referring to?

10 DELEGATE SCANLAN: I am referring to C.

11 THE CHAIRMAN: Does any Delegate have a copy of

12 the one marked C that the Chair can see?

13 Chief Page, do you have amendment marked C-2?

14 DELEGATE SCANLAN: This would have been spon-

15 sored by Delegates James, Raley, Sickles and Willoner.

16 THE CHAIRMAN: Yes, I have a copy now.

17 We will distribute themto the delegates so that

18 the delegates will know what you are speaking about.

19 Delegate Scanlan, the copy that the Chairman has

20 been handed has the words "General Assembly" in line four

21 stricken and the word "State" stricken. Is that the copy

1 you have?

2 DELEGATE SCANLAN: Yes, I have the same change.

3 THE CHAIRMAN: For what purpose does Delegate

4 Koger rise?

5 DELEGATE KOGER: Inquiry.

6 THE CHAIRMAN: State the inquiry.

7 DELEGATE KOGER: Can opponents print some amend-

8 ments, too? We may have a whole slew of them over on this

9 side.

10 THE CHAIRMAN: I don't know. All I can say is

11 what the Chair announced earlier. The only way to have the

12 matter open again is to have the vote by which the recom-

13 mendation was approved reconsidered. If it is reconsidered

14 it is open to amendment. If it is not reconsidered it is

15 not open to amendment.

16 Have the pages distributed copies of the amend-

17 ment marked C?

18 Any delegates who do not have it please indicate

19 to the pages. They will bring you a copy immediately.

20 Harry Taylor.

21 For what purpose does Delegate Harry Taylor

1 rise?

2 DELEGATE H. TAYLOR: Parliamentary inquiry.

3 THE CHAIRMAN: State the inquiry.

4 DELEGATE H. TAYLOR: I wonder if it is to have

5 a limited reconsideration and have -- when we move the

6 motion to reconsider will we know that we are going to

7 reconsider only the specific amendment because it may make

8 a great difference if we are going to vote to open it up

9 to a flood of amendments that Delegate Koger suggested may

10 come in from opponents.

11 THE CHAIRMAN: I don't think that is possible.

12 If the vote is reconsidered the vote is open for any

13 amendment. I don't think the Chair can rule it will be

14 open for only one amendment and not any other. Then, it

15 just isn't feasible.

16 Delegate Scanlan has moved that the vote by

17 which Committee Recommendation SF-2 was approved be recon-

18 sidered so that the Committee Recommendation would be before

19 you and he has stated his intention if that is done to offer

20 an amendment in the form which has been distributed to you

21 except that as the Chair understands it, the printed form

1 would be corrected by changing the words "General Assembly"
2 in line 4 to the word "State". That amendment is notnow
3 before you. It is before you only for information purposes.
4 What is now before you is the motion to reconsider. The
5 motion has been seconded. For what purpose does Delegate
6 Gleason rise?
7 DELEGATE GLEASON: Is this motion fesible?
8 THE CHAIRMAN: It is.
9 Delegate Gleason.
10 DELEGATE GLEASON: I would like to ask a question
11 of the sponsor of the motion.
12 THE CHAIRMAN: Delegate Scanlan, do you yield to
13 a question?
14 DELEGATE SCANLAN: Yes, sir.
15 THE CHAIRMAN: Delegate Gleason.
16 DELEGATE GLEASON: Do I understand thac the
17 questin before us is for reconsideration, and if we
18 vote to reconsider, then the amendment that has been
19 distributed will be voted upon?
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1 DELEGATE SCANLAN: Why, certainly.

2 THE CHAIRMAN: Delegate Gleason.

3 DELEGATE GLEASON: The other question I have.

4 As this amendment is now written, would this be stretched

5 enough to cover race track operation within the State of

6 Maryland?

7 THE CHAIRMAN: Delegate Scanlan.

8 DELEGATE SCANLAN: I gather from the definition

9 of lottery that has grown up, that lottery would not in-

10 clude race track operations on the ground, that is a

11 sport. There is skill involved and not pure chance. Let

12 me say very frankly, Delegate Gleason, you know that I

13 have the greatest reservation about any provision but it

14 seems to me at least the proposed amendment if the vote were

15 reconsidered would make it perfectly clear the only thing

16 we are prohibiting is State operation or local operation

17 over what is considered to be a lottery and hopefully

18 horse racing is not a lottery.

19 THE CHAIRMAN: Delegate Henderson.

20 DELEGATE HENDERSON: Could I ask Delegate

21 Scanlan if it is not true that the purpose of financing any

1 expenses of the Government would allow you to have a
2 lottery, the State to build the Washington Monument or any
3 other good work or evil work.
4 THE CHAIRMAN: Delegate Scanlan.
5 DELEGATE SCANLAN: I would think, Judge Hender-
6 son, building a monument or doing other good or evil works
7 if authorized by the General Assembly would be regarded
8 as an expense of government and the General Assembly could
9 be called to act on that basis.
10 The purpose of the amendment would be to make
11 clear the only thing we are prohibiting is the conduct
12 of the lottery by the General Assembly or the political
13 subdivision for the purpose of raising public funds.
14 THE CHAIRMAN: Delegate Bennett.
15 DELEGATE BENNETT: Mr. Chairman, may I ask whether
16 Delegate Scanlan would consider in view of what he just now
17 says revising this to say that neither the General Assembly
18 nor the governing body of any political subdivision of the
19 State shall authorize or operate a lottery for any purpose.
20 THE CHAIRMAN: Delegate Bennett, the amendment is
21 not before us. At the proper time, if it comes before us you
could submit that question to Delegate Scanlan.

1 Delegate Bennett.

2 DELEGATE BENNETT: If the motion to reconsider

3 prevails, that must be borne in mind.

4 THE CHAIRMAN: Very well.

5 Delegate Rybczynski.

6 DELEGATE RYBCZYNSKI: Mr. Chairman, in fairness

7 I think we could vote on the motion as it is now on the

8 floor. This is the very first debate I have ever heard in

9 my lifetime on the question of lottery. It has been an

10 education to me and I am sure most of the delegates here.

11 Most of us went into this vote without amendment in the

12 belief that there were going to be amendments, so that if

13 that be the case, it seems right and proper that we go

14 ahead with the motion to reconsider. There has been an

15 awful lot of law thrown out this afternoon that is awfully

16 hard to comprehend.

17 THE CHAIRMAN: Delegate E. Churchill Murray.

18 DELEGATE E. C. MURRAY: I am not sure about the

19 propriety. Yet we have been told what amendment will be

20 applied if we reconsidered. We ought to have a clear

21 understanding. What is your intention here? I gaze with

1 some alarm at what appears to be the breadth of this
2 amendment.
3 THE CHAIRMAN: Let the Chair state what he
4 understood Delegate Scanlan to indicate the purpose of the
5 amendment without trying to phrase it exactly and Delegate
6 Scanlan can correct the Chair if he is wrong.
7 He would propose to offer the amendment which
8 would forbid lotteries being conducted by or for a State
9 or political subdivision but would not include private
10 lotteries which would leave it to the Legislature to per-
11 mit or forbid private lotteries, is that correct?
12 Delegate Scanlan.
13 DELEGATE SCANLAN: Yes.
14 THE CHAIRMAN: Churchill Murray.
15 DELEGATE E. C. MURRAY: Would this permit private
16 parties to operate a lottery, private parties beyond what
17 we normally have in mind in churches and fire halls and that
18 sort of thing.
19 THE CHAIRMAN: Delegate Scanlan.
20 DELEGATE SCANLAN: If the Legislature permitted
21 it, the answer would be yes.

1 THE CHAIRMAN: This would not forbid it. Whe-
2 ther it was permitted would be up to the Legislature.
3 Do you have a further question, Delegate Murray?
4 DELEGATE E. C. MURRAY: Yes.
5 THE CHAIRMAN: State it.
6 DELEGATE E. C. MURRAY: Would this not subject the
7 Legislature to pressure over and over and over again --
8 THE CHAIRMAN: That is a matter of debate. You
9 can argue that right now, if you wish.
10 DELEGATE E. C. MURRAY: I can argue it now?
11 THE CHAIRMAN: Yes. I am just pointing out that
12 it is not a question addressed to Delegate Scanlan. Dele-
13 gate Churchill Murray.
14 DELEGATE E. C. MURRAY: Delegate Scanlan --
15 THE CHAIRMAN: Delegate Churchill Murray, the
16 Chair suggests it is properly a matter of debate and not
17 for question. You may argue the point right now.
18 DELEGATE E. C. MURRAY: Then I wish to argue.
19 THE CHAIRMAN: Proceed.
20 DELEGATE E. C. MURRAY: That by way of example
21 an adjoining county badly needed a hospital some years ago

1 and they permitted slot machines to come into their
2 counties with this in mind. The hospital was built, it has
3 nearly fallen down. The slot machines are still there and
4 are benefiting primarily two or three racketeers who
5 placed them there who are not natives of the county at all.
6 This is not a perfect parallel, but what I am trying to
7 illustrate is that I am not necessarily opposing charitable
8 institutions doing this and I am not necessarily opposing
9 doing this for worthwhile causes if anyone can determine
10 what that means, but I am afraid of the breadth of the per-
11 mission that it appears that this puts back in the
12 law. We need to know what is this bag of apples.
13 Now, whether we should mention this in the
14 Constitution at all or not is a separate question but if we
15 are going to do that, then should we open it wide to
16 private operations?
17 THE CHAIRMAN: The question arises on the motion
18 to reconsider. Is there any further discussion?
19 Delegate Neilson.
20 DELEGATE NEILSON: Fellow delegates, I arise to
21 oppose the motion to reconsider and urge that those who

1 voted yes a moment ago vote no this time. I don't think
2 that any of us who want to set ourselves up as being the
3 judges on the Court of Appeals to decide just what the
4 effect of the language is as it now stands as we have just
5 accepted it. I would suggest that we not attempt to bring
6 in that element.
7 I speak of these who run these things, whether
8 for governmental purposes or for private interests and I
9 would suggest that we keep it all out and let the court
10 decide how far it will go in its wisdom. Vote no on the
11 motion to reconsider.
12 THE CHAIRMAN: Any delegate desire to speak in
13 favor of the motion to reconsider?
14 Delegate Koger.
15 DELEGATE KOGER: I would want to ask a question
16 of Delegate Scanlan.
17 THE CHAIRMAN: His time has expired. We will
18 permit one more question.
19 Delegate Koger.
20 DELEGATE KOGER: I would like to ask the Chair a
21 question.

1 THE CHAIRMAN: Ask it of Delegate Scanlan.

2 DELEGATE KOGER: I would like to be sure that I
3 heard Delegate Scanlan correctly say if a private coprora-
4 tion in the State of Maryland wanted to hold a lottery to
5 support a study of cancer, state-wide, and when it would
6 go to support and fight cancer, it would be all right
7 provided that --

8 THE CHAIRMAN: Delegate Scanlan.

9 DELEGATE SCANLAN: That would be all right pro-
10 vided it did not violate the specific statute that the
11 Legislature had enacted.

12 THE CHAIRMAN: Any other delegate desire to
13 speak in favor?

14 DELEGATE BARD: Mr. Chairman, I should like to
15 speak in favor of the motion to reconsider. There are a
16 goodly number of us here who feel that there is a fine
17 distinction in regard to the question in debate. I believe
18 by way of illustration that the State should not seek to
19 legislate in the area of morality and therefore I would
20 tend to feel that perhaps the motion we have just approved
21 was not entirely to my liking.

1 On the other hand, I must say that I am very much
2 concerned about the fact that the State itself should
3 create an image that to me seems most contradictory. When-
4 ever I get up to New York City and see the advertisements
5 and the subway ads which say, "Buy New York State Lottery
6 Tickets so we can support our educational purposes." I
7 then recognize the anomalous situation of that advertise-
8 ment and the contradictory role it plays in terms of educa-
9 tion.
10 It seems to me that this kind of action on the
11 part of the State itself cancels out the very functions
12 and aims and goals which public education seeks, so from
13 this point of view I see the amendment that might be
14 offered if we reconsidered as one which serves the purposes
15 of those who do not seek to legislate morality on one hand
16 but on the other hand do not desire to have the State itself
17 enter into a contradictory role. These are the education
18 and taxation roles.
19 THE CHAIRMAN: Delegate Burdette.
20 DELEGATE BURDETTE: I have a very brief state-
21 ment position and a parliamentary inquiry, if I may.

1 THE CHAIRMAN: State the inquiry.

2 DELEGATE BURDETTE: The brief statement is that
3 the debate this evening has caused me to change my pre-dinner
4 position and take the view that our vote a few minutes ago
5 was absolutely right.

6 The parliamentary inquiry is this: If this
7 motion to reconsider should be adopted and if a subsequent
8 motion should be defeated, would the Chair rule that it is
9 possible in a parliamentary sense to return to the recently
10 adopted recommendation of the committee?

11 THE CHAIRMAN: What is the subsequent motion.
12 You said if a subsequent motion were defeated.

13 Delegate Burdette.

14 DELEGATE BURDETTE: I presume the subsequent
15 motion after reconsideration is the motion which Delegate
16 Scanlan has offered. If it is defeated would we be in a
17 situation where there is nothing in the Constitution, or
18 would be in a parliamentary situation, where we could return
19 to some other provision.

20 THE CHAIRMAN: Let the Chair make this state-
21 ment hopefully to remove any further doubt, if there is any,
as to what the situation is. Committee Recommendation SF-2

1 was adopted with the very explicit understanding that its
2 meaning was to prohibit in and of itself, without legisla-
3 tive implementation all lotteries in the State of Maryland
4 whether conducted by governmental unit or by private per-
5 sons or corporations and that the language would be so
6 modified by the Committee on Style to make it abundantly
7 clear that the provision in the Constitution was a self-
8 executing absolute prohibition against lotteries being
9 conducted in the State of Maryland. That recommendation
10 with that interpretation was approved. If the vote by
11 which it was approved is reconsidered, the recommendation
12 is still before the Committee of the Whole. There will
13 be an amendment offered. If the amendment fails, the
14 recommendation is still before the Committee of the Whole
15 either subject to further amendment or subject to approval
16 in its then form.
17 Are there any questions as to the parliamentary
18 procedure.
19 The Chair recognizes Delegate Wiedemeyer.
20 DELEGATE WIEDEMEYER: Mr. President, and members
21 of the Committee, I want to speak in favor of the motion to

1 reconsider. I want it clearly understood that if the
2 motion to reconsider is adopted that I shall vote if
3 Amendment C is offered, against it, because I think that
4 probably the State may at some time want to operate a
5 lottery for legitimate purposes and probably if the State
6 operated it properly that might be the best way to do it,
7 however, I do not want to preclude the State from doing
8 that as Amendment C would, but I would want the motion to
9 reconsider carried so that we can further define what
10 we mean by "lottery". There has been a lot bandied around
11 here today as to whether a 50-50 raffle and as I understood
12 the Chairman of the Committee to say, a 50-50 raffle
13 by a club would be considered a lottery. I want to read
14 you something from the brief of Rufus King in the recent
15 case on bingo and the Chairman said that bingo would not
16 be included as lottery but Mr. Rufus King in writing his
17 brief for the Court of Appeals said this on page 29 of his
18 appellant brief. He says, "Only two courts in the United
19 States, at least as far as counsel have been able to de-
20 termine by diligent research, have ever suggested that
21 bingo was not a lottery and those are the Howard County

1 and Anne Arundel County Circuit Courts which avoided the
2 conclusion pressed here by appellants by finding that
3 bingo cannot be a lottery because it is a game. (E. 162-64,
4 115-19).

5 "Cases reaching an opposite conclusion as to
6 bingo and bingo variants include the following: State
7 versus Multere in Wisconsin, 50,289 N. W. 600 (1940);
8 State versus Laven, 270 Wisconsin, 574,71 N. W. 2d 287
9 (1955); State versus Mabrey, 249-A 428,60 N.W. 2d 889
10 (1953); State versus Randall, 121 Oregon 545, 256P393
11 (1927); State versus Hahn, 105 Montana, 270,72P 2d 459
12 (1937); City of Good Neighbors versus Antwerp, 324 Michigan
13 22,36 N.W. 2d 308 (1949); People versus Welch, 269 Michigan
14 449,257 N.W. 859, (1934); Hoffman versus State, 219 S.W.
15 2d 539 (Texas); Nadinv Starinck, 24 Ohio 2d 323,194 N.E.
16 2d 81 (1963); Kayden Industries versus Lefkowitz, 259 N.Y.S.
17 2d 704 (1965)."

18 "Appellees in this case have loaded the record.
19 (E. 8-40) with material describing and illustrating their
20 particular bingo operations in minute detail. But the
21 nature of bingo is not in dispute; all agree that patrons

1 (1) pay cash for cards, (2) fill the cards according to a
2 wholly chance determined drawing of numbered balls, and
3 (3) receive a cash prize if they make a winning assignment.
4 These are the classic elements of lottery. Horner versus
5 U.S., 147 U.S. 449 (1893); Shelton versus State, 198 Mary-
6 land, 405,84A 2d 76 (1951); Ballock versus State, 73
7 Maryland 1,20A184 (1890); Long versus State, 74 Maryland
8 565,22A4 (1891)."
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1 Now, Mr. President, if bingo in the view of
2 these appellants can be considered a lottery, no 50-50
3 chance can be excluded from it. No raffle conducted by
4 a club can be excluded from a definition of lottery
5 and therefore I hope that the motion to reconsider is
6 carried so that we can put some definitions in here and
7 say what is included and what is not included. I would
8 like to be able to go out to the people of my area and say
9 that this Convention has either prohibited or not prohibited
10 so we might tell them what you are here doing. If you want
11 to set moral standards go ahead and do it but I have to
12 explain it to my people. My people may or may not accept
13 it.
14 THE CHAIRMAN: Delegate Fornos.
15 DELEGATE FORNOS: Mr. Chairman, I speak in oppo-
16 sition to the vote to reconsider and I think that some of
17 the people who are now taking the floor urging recon-
18 sideration are explaining Delegate Murray's question.
19 What is inside the bag of apples is a bag of worms. I
20 hope we would defeat this Trojan horse.
21 THE CHAIRMAN: Any other delegate desire to
speak in favor of the motion to reconsider?

1 Delegate Carson.

2 DELEGATE CARSON: I voted in favor of Committee

3 Recommendation SF-2 because I think it would be unwise to

4 permit this State to engage in financing by lottery or to per-

5 mit any political subdivisions to do so. That is as far

6 as the constitutional ban should go. If reconsidered I

7 shall then vote for the amendment proposed.

8 THE CHAIRMAN: Delegate Sickles:

9 DELEGATE SICKLES: I hope that nothing I said

10 after SF-2 was adopted didn't -- I am opposed to the

11 motion. I am theoretically one of the fathers of Amend-

12 ment No. C, but I want to disown it at this point.

13 This was a secondary position for me and I hope

14 for some of the others feeling that perhaps SF-2 ought to

15 be adopted. I will vote against the motion to reconsider.

16 THE CHAIRMAN: Let the Chair say Amendment C

17 distributed to you was distributed for information only.

18 You are not to consider that it is or it will be offered

19 by the delegates whose names appear. At least two of them,

20 Delegate James and Sickles do not oppose to offer the

21 amendment. I don't know about the others. But at least

1 they are not sponsoring it.

2 Delegate Malkus.

3 DELEGATE MALKUS: Mr. President, I know, sir,

4 that just as soon as I start to speak that you will rule

5 me out of order.

6 But gambling is gambling and there is no dif-

7 ference whether you lose it on a lottery or whether you

8 lose it on a horse.

9 I know that horse racing controls a great part

10 of the State of Maryland. But for this body to outlaw

11 something as insignificant as a lottery and make no men-

12 tion of the millions of dollars that are lost on bad

13 horses is a reflection on the intelligence of this honor-

14 able body.

15 The fathers of this article here refer only to

16 lottery. What does lottery mean? What will the courts

17 say lottery means. No one here is smart enough to know

18 what the courts are going to say. To a man who doesn't

19 bet except to play a little gin rummy once in a while, I

20 would like to see the State of Maryland get out of gambling,

21 including horse racing. I got nothing against horse racing

1 but I have learned that you can't discriminate any more in
2 this country and I believe that is a good thing but let us
3 not discriminate against gambling. If you want to gamble,
4 my friend, Scanlan, says horse racing is a game. He might
5 be a smart man in figuring out these games but some of my
6 friends are not that smart.
7 My point is this, Mr. Chairman: Let us face up
8 to reality, are we going to allow gambling in Maryland or
9 aren't we? Let us not be hypocrites. Let us not say it is
10 all right to gamble on a horse and lose your shirt on a
11 horse but for Heaven's sakes don't buy a lottery ticket.
12 Now, Mr. President, you have been very patient
13 like Governor Tawes said at, I understand, a little con-
14 ference that you had the other evening; you are Presi-
15 dent, and you are patient but this is a constitutional
16 convention and I would like to go ahead and talk on the
17 record and I hope you don't cut what I have said out
18 because there is not any difference between gambling --
19 gambling causes an awful lot of misery and a lot of people
20 have lost their homes and wives and everything else be-
21 cause their horses didn't run fast enough.

1 THE CHAIRMAN: You have one-half minute, Dele-
2 gate Malkus.
3 DELEGATE MALKUS: Thank you, Mr. Chairman.
4 If the horses run slow, that is O. K., that is
5 a game. But for Heaven's sake, don't go ahead and bet on
6 the lottery and numbers, I don't believe in any of them.
7 I also believe there is no difference in it.
8 THE CHAIRMAN: Any other delegate desire to speak
9 on the motion to reconsider?
10 The question arises on the motion to reconsider
11 the vote on which Committee Recommendation SF-2 was
12 approved.
13 A vote Aye is a vote in favor of reconsidera-
14 tion. A vote No is a vote against.
15 Cast your vote.
16 Has every delegate voted?
17 Does any delegate desire to change his vote?
18 The Clerk will record the vote.
19 There being 69 votes in the affirmative and 58
20 votes in the negative the motion by which the Commission
21 Recommendation SF-2 is approved is reconsidered. The
Chair recognizes Delegate Scanlan.

1 DELEGATE SCANLAN: Mr. Chairman, fellow dele-
2 gates, I would now like to offer the amendment to which
3 I adverted in the debate on the motion for reconsidera-
4 tion.
5 The sole purpose of the amendment--
6 THE CHAIRMAN: Just a second, before you speak
7 to it. The amendment is offered solely by you?
8 DELEGATE SCANLAN: Well, the original authors
9 were James, Delegate James, --
10 THE CHAIRMAN: I am asking you now whether
11 you are offering the amendment on behalf of yourself.
12 DELEGATE SCANLAN: I will offer it on behalf
13 of myself and if there are a few courageous fellows
14 around they can join in.
15 Thank you, Delegate Raley. Sorry, Carlton.
16 A few volunteers here, you can get the names.
17 THE CHAIRMAN: The amendment is offered on
18 behalf of Delegates Scanlan, Raley and Boileau, Delegate
19 Finch, Harry Taylor.
20 DELEGATE SCANLAN: Mr. Mosner also.
21 THE CHAIRMAN: Please mark your copies accordingly.

1 This will be Amendment Number 1. Does the Chair
2 understand Delegate Sickles, you are modifying the amend-
3 ment by changing the words "General Assembly" in line
4 4 to read simply "state"?
5 DELEGATE SICKLES: Yes.
6 THE CHAIRMAN: Amendment Number 1, offered by
7 Delegates Scanlan, Raley, Boileau, and Finch reads as
8 follows:"Neither the state nor the governing body of
9 any political subdivision of the state shall operate or
10 authorize a lottery for the purpose of financing any
11 expenses of government."
12 The Chair recognizes Delegate Scanlan to speak
13 to the amendment.
14 DELEGATE SCANLAN: The sole purpose of this
15 amendment as I understand it from its original framers
16 and as I now adopt it is to make perfectly clear that the
17 General Assembly, the state government and the govern-
18 ments of the political subdivisions may not either operate
19 or permit the operation or authorize the operation of a
20 lottery, whatever that may be, for the purpose of paying
21 public revenue.

1 I had thought this was the original purpose of
2 the proposal contained in SF-2. But during the debate
3 upon questioning it became crystal clear and the Chair
4 stated it unequivocally that if passed, and we did pass
5 it, now it has been reconsidered, if passed it would bar
6 any state toleration, sanctioning or authorization of a
7 lottery whatever that subject encompasses, on the part
8 of any private group.
9 In the minds of many of this assembly, that
10 went much too far and far beyond the debate that went
11 on before the Commission, far beyond what I thought was
12 the original intention of Judge Sherbow's proposal.
13 In order to clarify it and refute that extreme
14 position, I have offered this amendment. I will not
15 repeat the debate on it. We debated it ad nauseum, but
16 the proposal that passed but has been reconsidered,
17 would permit the court of this state, highest court of
18 this state, to determine what forms of gambling embraced
19 within the concepts of lottery would be permitted.
20 I want to read you the second definition in
21 Webster's 7th New Collegiate Dictionary of lottery. I

1 will read the first to be fair, because that is the one
2 that is a little more familiar to us all.
3 The first definition given in lottery, a drawing
4 of lots in which prizes are distributed to the winners,
5 among persons buying a chance.
6 I would think that first definition would bar
7 the private operation of a raffle, a give-away, even the
8 gasoline stations where you have to buy something to get
9 a prize; it certainly would bar bingo and a host of other
10 things.
11 The second definition, equally acceptable, is
12 an event or affair whose outcome is or seems to be de-
13 termined by chance.
14 I have been to a few horse races that might be
15 covered by that definition. But it seems to me that this
16 would give a power in the court that should be denied
17 them.
18 There is no excuse for putting in the Consti-
19 tution this type of prohibition unless one is to accept
20 the suggestion of my good friend Delegate Malkus to bar
21 all forms of gambling activity.

1 I suggest the amendment I have offered as
2 originally proposed by the founders at least strikes a
3 medium ground and I think returns us to the original
4 provision in the Constitution which would bar the state
5 from conducting or authorizing the conduct of a lottery
6 in its behalf.
7 The only change would be the political subdi-
8 visions would now be subject to the same prohibition.
9 I urge that the delegates strike this happy com-
10 promise between unrealistic morality in a Constitution
11 and perhaps sound restraint on the General Assembly from
12 adopting a lottery in the future.
13 THE CHAIRMAN: Delegate Malkus.
14 DELEGATE MALKUS: I would like to ask my good
15 friend Al Scanlan if he will yield to a question.
16 THE CHAIRMAN: Delegate Scanlan, do you yield to
17 a question?
18 DELEGATE SCANLAN: Yes, Delegate Malkus.
19 THE CHAIRMAN: Delegate Malkus.
20 DELEGATE MALKUS: Did I understand you to say
21 that I was opposed to all forms of gambling?

1 DELEGATE SCANLAN: No, I didn't mean to sug-
2 gest that. I thought you had made a very good point in
3 that it is very difficult to distinguish between horse-
4 racing and lotteries, and my suggestion in reading the
5 second definition for lottery in Webster's indicates, --
6 the second definition for lottery found in Webster's Dic-
7 tionary indicates you may be closer to the truth than
8 many of us here.
9 THE CHAIRMAN: Delegate Malkus.
10 DELEGATE MALKUS: I thank the gentleman.
11 (Laughter.)
12 THE CHAIRMAN: Any delegate desire to speak in
13 opposition to the amendment?
14 Delegate Bennett.
15 DELEGATE BENNETT: Mr. Chairman, I rise to
16 offer an amendment to the amendment. I propose that
17 on line 7 the word "the" be struck and substitute there-
18 fore the word "any".
19 THE CHAIRMAN: The word what?
20 DELEGATE BENNETT: The word "any", A-n-y. After
21 the word "purpose", a period, and the rest of the amendment

1 be stricken.

2 In other words, what this will say is that neither

3 the General Assembly nor the governing body of any politi-

4 cal subdivision of the state shall operate or authorize

5 a lottery for any purpose.

6 That is straight-forward. It means there

7 could be no question about its meaning. There is, as

8 my good friend Delegate--

9 THE CHAIRMAN: Just a second, please. Do you

10 accept the amendment, Delegate Scanlan?

11 DELEGATE SCANLAN: No, for the reason that the

12 language--

13 THE CHAIRMAN: Not necessary to state the

14 reason. Is there a second of the proposed amendment?

15 (The amendment was seconded.)

16 THE CHAIRMAN: Proposed Amendment is seconded.

17 The Chair recognizes Delegate Bennett. This

18 will be Amendment 1-A.

19 DELEGATE BENNETT: I ask the indulgence of the

20 audience for only a very few minutes. We debated it at

21 length. Let us stand up and be counted for this.

1 Are you for lottery or are you against? Do
2 you want to put in some weasel-words in this argument or
3 do you want to stand up and say where you stand with re-
4 gard to the lotteries?
5 Are they a menace to the good name, as Senator
6 James said, of the state of Maryland? Are they something
7 that robs our state of the kind of image it would like to
8 give the rest of the country? Let's say what we mean and
9 have done with it, and not leave it to some court.
10 This amendment as now proposed is a shell game.
11 When I was a youngster I used to go around to the state
12 fairs and see the fellow manipulate the shells and he
13 had great skill in getting the pea between his fingers. I
14 say with all due deference to my friend Al Scanlan, he
15 has got the pea between his fingers. He is trying to
16 kill this amendment.
17 I think we should stand up and be counted and
18 vote straight-forward, so I urge this amendment.
19 THE CHAIRMAN: The question now arises on the
20 amendment to the amendment. Does Delegate Macdonald
21 desire to be heard on the amendment?

1 For what purpose does Delegate Clarke rise?

2 DELEGATE CLARKE: For a point of parliamentary

3 inquiry.

4 Is not the amendment to the amendment out of

5 order since in substance it is something that the majority

6 report dealt with?

7 THE CHAIRMAN: I am not sure. It depends on

8 how one interprets the word "authorized." This is a

9 question I was waiting for someone to raise.

10 Delegate Bennett, what do you intend by the use

11 of the word "authorize"in line six?

12 DELEGATE BENNETT: My intention is clear.

13 Namely, that it states the General Assembly does not permit,

14 authorize, sanction, what have you, a lottery for any

15 purpose.

16 THE CHAIRMAN: Very well. The amendment to the

17 amendment is out of order. The question arises on the

18 original amendment, Amendment 1.

19 Delegate Bennett.

20 DELEGATE BENNETT: Would you please inform me

21 why the amendment is out of order?

1 THE CHAIRMAN: Because on the basis of your
2 explanation, it is equivalent to the recommendation.
3 DELEGATE BENNETT: Equivalent to the--
4 THE CHAIRMAN: To the Committee Recommendation.
5 So you would be taking it right back to the Committee
6 Recommendation. You accomplish the same purpose by
7 voting against the amendment.
8 DELEGATE BENNETT: I urge people to vote
9 against the amendment, then.
10 THE CHAIRMAN: Very well.
11 Delegate Macdonald.
12 DELEGATE MACDONALD: Mr. Chairman, I was going
13 to make the very same amendment which Delegate Bennett
14 has already made but I would not put the same interpre-
15 tation on it. (Laughter.)
16 THE CHAIRMAN: I think the words are suspect
17 now. You better use different words, then.
18 DELEGATE MACDONALD: Mr. Chairman, I do think
19 that this contains a negative predicate,namely that the
20 state or a local governing body could authorize a lottery
21 for a private purpose.

1 THE CHAIRMAN: Could you accomplish the purpose
2 that you seek by amending in the manner suggested by
3 Delegate Bennett, except that instead of the word
4 "any" in line 7 you use the word "public"?
5 DELEGATE MACDONALD: I would say for any public
6 or private purpose.
7 THE CHAIRMAN: The Chair would rule it would
8 be equivalent to the Committee Recommendation. The
9 effect of the Committee Recommendation is to prohibit
10 a lottery for either public or private purpose. If you
11 are seeking to amend amendment 1 to accomplish the same
12 thing, it is equivalent to the Committee Recommendation.
13 DELEGATE MACDONALD: I don't like to prolong
14 this, Mr. Chairman, but the way I read this, it is
15 vastly different from the recommendation made by the
16 Committee.
17 THE CHAIRMAN: By this, you mean what?
18 DELEGATE MACDONALD: This Amendment C,
19 Amendment Number 1.
20 THE CHAIRMAN: It is indeed.
21 DELEGATE MACDONALD: This is confined to an

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1 operation of lottery by the state or by a local govern-
2 ing body or an authorization of a lottery by the state
3 or local governing body.
4 THE CHAIRMAN: Perhaps the Chair misunderstood
5 your purpose. State the manner in which you would amend
6 Amendment Number 1.
7 DELEGATE MACDONALD: I would amend amendment
8 Number 1 in the very same way Delegate Bennett has
9 suggested or as an alternative on line 7, instead of
10 saying "for the purpose of", et cetera, say "for any
11 public or private purpose".
12 But the prohibition of the entire amendment
13 would be against a lottery either conducted by the
14 state or authorized by the state. In my opinion, that would
15 not outlaw a lottery which is conducted by a private or-
16 ganization.
17 I understand that SF-2 would do the latter,
18 and this would not.
19 THE CHAIRMAN: Delegate Macdonald, would it not
20 be authorized by the state if lottery were made an
21 exception to the general anti-gambling statute? Would it

1 not come then within the language of being authorized by
2 the state?
3 DELEGATE MACDONALD: Yes.
4 THE CHAIRMAN: Then I think it would be sub-
5 stantially the same as the previous recommendation. I
6 think you can achieve your objective but you would have
7 to use some different language than the word "authorize".
8 If I understand you now, you are trying to say
9 you want to prohibit the state by affirmative action
10 authorizing but not prohibit the state by negative action
11 in effect from permitting a private lottery, is this the
12 essence of what you are trying to get at?
13 DELEGATE MACDONALD: Mr. Chairman, what I am
14 trying to get at is to have it drafted so that a
15 lottery could be conducted by a private organization and
16 that this per se would not be a prohibition against that,
17 but that the state and the local governing bodies, on
18 the other hand, would be prohibited from authorizing,
19 if you will, or conducting a lottery for any purpose,
20 whether public or private.
21 For instance, they might authorize a lottery

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1 for the purpose of building a swimming pool. It wouldn't
2 necessarily be public.
3 THE CHAIRMAN: In order to make its intent
4 clear so it would not be quibbling, I think you have to
5 change the language around, in view of earlier discussion.
6 I call your attention to the fact the word "authorize"
7 is the word now used in the Committee Recommendation,
8 SF-2.
9 It seems to me that unless we change the
10 language in Amendment 1 you are by the suggestion you
11 make coming right back to Committee Recommendation SF-2.
12 DELEGATE MACDONALD: I will try to work on some
13 language.
14 THE CHAIRMAN: Very well.
15 The question arises on Amendment Number 1. Does
16 any delegate desire to speak in favor of amendment Number
17 1?
18 Delegate Pullen.
19 DELEGATE PULLEN: Mr. Chairman, is book-making
20 a lottery?
21 THE CHAIRMAN: Are you addressing the question

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1 to the Chair?

2 DELEGATE PULLEN: Yes.

3 THE CHAIRMAN: Delegate Pullen.

4 DELEGATE PULLEN: My second question is this.

5 (Laughter.) Does this amendment permit legalized book-

6 making?

7 THE CHAIRMAN: The only safe answer the Chair

8 could give to either of those questions it to say he

9 doesn't know.

10 DELEGATE PULLEN: I don't think any of us knows.

11 THE CHAIRMAN: Does any delegate desire to speak

12 in favor of the amendment?

13 Any delegate desire to speak in opposition to

14 the amendment?

15 Delegate Macdonald, do you have any suggestion

16 you want to offer?

17 DELEGATE MACDONALD: No, not now, Mr. Chairman.

18 THE CHAIRMAN: Very well.

19 The question arises on the adoption of Amendment

20 Number 1 to Committee Recommendation SF-2.

21 The amendment as it is now before you is as

1 follows, and this would be substituted entirely for the
2 language in Committee Recommendation SF-2.
3 "Neither the state nor the governing body of
4 any political subdivision of the state shall operate or
5 authorize a lottery for the purpose of financing any
6 expenses of government."
7 A vote Aye is a vote in favor of the amendment
8 as a substitution for the Committee Recommendation; a vote
9 No is a vote against.
10 Cast your vote.
11 Has every delegate voted? Does any delegate
12 desire to change his vote? The Clerk will record the
13 vote.
14 There being sixty-nine votes in the affirmative
15 and 60 in the negative, the amendment is adopted.
16 The question now arises on the approval of
17 Committee Recommendation Number SF-2 as amended. Is there
18 any further discussion?
19 Are you ready for the question? A vote Aye
20 is a vote in favor of the Committee Recommendation as
21 amended; a vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote? The Clerk will record the vote.

There being 101 votes in the affirmative and 29 in the negative, the motion is carried, Committee Recommendation SF-2 as amended is approved.

The Chair recognizes Delegate Case, Vice-Chairman of the Committee, to present Committee Recommendation SF-3.

Delegate Ulrich.

DELEGATE ULRICH: Mr. Chairman,I rise to a point of personal privilege.

THE CHAIRMAN: State your privilege.

DELEGATE ULRICH: I would like to welcome in the balcony over the rostrum the Honorable Tyras Athey, member of the House of Delegates, his lovely daughter Darlene, and her friend Miss Elizabeth Johnson.

THE CHAIRMAN: Delighted to have you.

Delegate Boyer.

DELEGATE BOYER: Mr. Chairman, ladies and gentlemen of the Convention, on the point of personal

1 privilege, I would like to relate an incident that hap-
2 pened in our section of the state.
3 In anticipation of the many complexities of
4 this Convention, and in an attempt to obtain an accurate
5 expression of the people, Kent County adopted something
6 that is positively novel and to the best of my knowledge
7 was not attempted in any other county.
8 We appointed in our county a Kent County Con-
9 stitutional Convention Committee made up of a cross-
10 section, an accurate cross-section, of the people.
11 They then went out and obtained the viewpoint of the
12 citizenry of the county.
13 The Kent County delegation of this Convention
14 then sent back home, fed back home all the information we
15 could obtain here at this Convention to the Kent County
16 Constitutional Convention Committee so that they could
17 work on it and advise and guide our delegation here
18 how to vote.
19 I would like to take this opportunity to
20 publicly express my appreciation to this hard-working
21 group for the many hours they have devoted to the affairs

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1 of this Constitutional Convention for the guidance they
2 have given this delegate.
3 It is interesting to note that all of the
4 recommendations of the committee have been exactly the
5 same as the Kent County delegate would have voted if unad-
6 vised. My point is this, Mr. Chairman, that when this
7 finished product of the Convention is completed, you
8 may be sure that Kent County will be well-informed and
9 educated on what is going on.
10 I am delighted to have tonight this group of
11 honorable citizens as my guests for dinner, and to
12 supplement their education by having them meet with us
13 here.
14 I would be indebted, sir, if you would extend
15 the appreciation of this Convention to them and welcome
16 them in Annapolis.
17 THE CHAIRMAN: Delighted to have them with us.
18 (Applause.)
19 Delegate Case.
20 DELEGATE CASE: Ladies and Gentlemen of the
21 Committee, I have the honor to present Committee Recommenda-
tion SF-3,which is the only recommendation dealing with

1 the power of taxation, assessment and exemption to be
2 before you during this Convention.
3 It is divided into four paragraphs. I shall
4 read the paragraphs and explain to you briefly what each
5 means, perhaps give you a little historical background
6 of each of them in the process.
7 I would say at the outset these words sometimes
8 are confusing, because as stated earlier in the debate
9 on lottery, words dealing with taxation and with assess-
10 ment have sometimes acquired the label "words of art."
11 Therefore, where those words occur, I shall attempt to
12 give you the interpretation the Committee put upon them.
13 The first paragraph of Section 8.01 says taxes
14 shall be imposed only for a public purpose and by the
15 elected representatives of the people exercising legis-
16 lative power.
17 Unlike Delegate Sherbow, who chose not to go
18 into ancient history with respect to the discussion on
19 lotteries, I would with the indulgence of the Committee
20 suggest that these words come down to us through many
21 centuries.

1 As a matter of fact, recorded history tells us
2 they first found their way into English common law by
3 the statutes of 14,Edward the Third,Statutes 2, Chapter
4 one.
5 Because I am sometimes called a devotee of
6 classical language, I would like to read you these words.
7 The statute says the prelates, earls, barons and common
8 citizens, burgesses and merchants shall not be charged
9 to make any aid if it be not of the common assent of the
10 great men and common in parliament.
11 You can see at the outset what we are really
12 talking about here is the concept of taxation without
13 representation.
14 Blackstone goes on to suggest that the funda-
15 mental law has been shamefully evaded under many succeeding
16 princes by compulsive loans and benevolences, extorted
17 without a real or voluntary consent, and it was therefore
18 made an article in the petition of rights in III Charles,
19 Number 1, that no man shall be impelled to yield any
20 gift, loan, or benevolence, tax or such like charge
21 without the common consent of an act of parliament.

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1 So the first section carries forth this
2 ancient heritage into a modern Constitution and properly
3 so. It has been a part of our heritage through, as I
4 said, the petition of rights, through the Stamp Act
5 of 1765, in all Constitutions which have been in force
6 in this state, and now it is before you for this Consti-
7 tution of 1968.
8 There is one point I think is of importance
9 as you think about this particular provision. That is
10 that the section will prohibit anyone, any board, any
11 agency, which is not an elective board or agency, to im-
12 pose taxes.
13 While this might seem to be not a very impor-
14 tant point, it should be borne in mind that the Conven-
15 tion has already approved the establishment of many types
16 of agencies of various kinds, styles, of which we know not
17 yet, and this provision will say that no matter what they
18 are or how they are created, the power to tax will be
19 withdrawn and withheld from them, that only the peoples'
20 elected representatives shall have the power to tax.
21 The second paragraph in Section 8.01, 8.01b,

1 says the political subdivision shall retain unless with-
2 drawn by the General Assembly, such taxing powers as
3 they have at the time of the adoption of this Constitu-
4 tion. The General Assembly may confer or withdraw taxing
5 powers by laws applicable to one or more political sub-
6 divisions.
7 The second of these two sentences has already
8 been before the Convention and debated at length, and
9 I shall not restate the convention's pros and cons at
10 this time.
11 Suffice it to say that this is the provision
12 which retains the taxing power of the state in the
13 General Assembly until it is delegated by the law to
14 one or more of the political subdivisions.
15 The first sentence beginning at line 18 is
16 new. This sentence provides in substance that the politi-
17 cal subdivision shall retain the taxing powers they now
18 have. It was felt important that this sentence be included
19 to permit Baltimore City and the 23 counties to exercise
20 the powers they now have without any fear that the
21 Constitution which we are working on here, if adopted by

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1 the people, will act in diminution of those powers.

2 Section 8.02 on page 2, assessments, reads as

3 follows. Assements with respect to any tax shall be

4 made pursuant to uniform rules and pursuant to such clas-

5 sification of properties, taxpayers and events as may

6 be determined by law, which classes shall include property

7 devoted to agricultural use as prescribed by law.

8 This section is divisible in two parts for

9 our consideration here tonight, and I should like to

10 reason with you on each of them.

11 The first deals with the rule of uniformity,

12 a rule which many people in this state including Delegate

13 Henderson, President of the Convention, Delegate Sherbow,

14 and the present speaker fought for for many years.

15 It will provide that assessments shall be made

16 pursuant to uniform rules. First, you must notice the

17 word "shall", because this section mandates a rule of

18 uniformity. This is a proposition that has been fought

19 for, as I have said earlier, for the last 30 years at

20 least, and to my own certain knowledge, for the last 20.

21 The fight began during -- or it first began in

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1 the commission headed by the very distinguished member
2 of the Baltimore City Bar, Mr. R. E. Lee Ralls, continued
3 through the Commission headed by Honorable Joseph Sherbow,
4 finally the tax Survey Commission in 1949 which I chaired
5 and which the President of the Convention was a member,
6 all attempting to reach this result, with varying degrees
7 of success.

8 The section deals with any tax. I emphasize
9 the word "any" because the present declaration of rights
10 speaks in terms of the property taxes, but the rule of
11 uniformity should apply of course, to all taxes, both
12 excise and direct taxes, and this section attempts to do
13 that with the words "any tax."

14 It speaks in terms of uniform rules, because it
15 was recognized of course that absolute uniformity in the
16 property tax field is a point which is desirable but
17 which is in the last analysis completely unobtainable.

18 The section also requires that there shall be
19 classification and where you have in the tax field proper
20 classification it will follow generally speaking that
21 uniformity of assessments will be obtained.

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1 So much for the first part.

2 The second part has an interesting history

3 which I will attempt to trace very briefly. You will

4 notice at the beginning of line 6, the section says

5 which classes shall include property devoted to agricul-

6 tural use as prescribed by law.

7 This is the so-called farm land preferential

8 tax assessment which has been much debated in these halls

9 and in others for many years.

10 The history is simply this. In 1955 the

11 General Assembly passed at the suggestion of the delegate

12 from Montgomery County who is now state senator from that

13 county, a bill which would permit State Tax Commission

14 to classify farm lands in a different manner than property,

15 than other real estate.

16 That law was vetoed by Governor Mc Keldin and

17 at the next session in 1956 the General Assembly passed the

18 law over the governor's veto. Subsequently in a case

19 called Gale versus State Tax Commission, the Court of

20 Appeals of Maryland ruled that the law was unconstitutional

21 because the declaration of rights at that time did not

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1 permit the separate classification of land.

2 The court held that all land had to be similarly
3 classified, and that an attempt on the part of the General
4 Assembly to classify land separately was therefore invalid.

5 Thereafter in 1959 a Constitutional amendment
6 was put into our present Constitution or actually two
7 amendments, which would make it abundantly clear that
8 property devoted to agricultural use would be assessed
9 for such use and for no other use.

10 The methods by which the sponsors of this amend-
11 ment went about it were two-fold; first, they amended
12 Article 15 of the declaration of rights to permit the
13 separate classification of land.

14 Secondly, in Article 43 of the declaration of
15 rights they put a specific provision in the Constitution
16 which said any land actively devoted to farm or agricul-
17 tural use would have to be assessed as such, and not for
18 some other use.

19 This amendment was put before the people in
20 1 960 and by a vote of over 3 to 1 the amendment carried,
21 or the amendments carried. At that time it was sponsored

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1 by the Grange and all other agricultural associations and
2 entities, had the backing of most of the press, most of
3 the people who thought about these subjects advocated
4 its passage.
5 The advocacy took several grounds -- one was
6 that from the purely agricultural point of view, it was
7 necessary to save the farmer, the small farmer, the
8 marginal farmer from the impact of heavy taxes where his
9 property might be situated or happen to be situated in a
10 fast-growing area where values were skyrocketing.
11 It takes no stretch of imagination to realize
12 that land located in areas such as Montgomery County or
13 in the southern regions of Baltimore County or in the
14 great share of Prince Georges County which are actively
15 farmed,nevertheless have tremendous value over and above
16 that for farming, namely the value for subdivisions.
17 The second argument stated in effect that it
18 was not a question so much of helping a farmer or farmers
19 but it was the choice of values. That is to say, it was
20 important to the people of Maryland to preserve open
21 space,to preserve areas where you didn't have overnight

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1 slums constructed by developers. That these were things
2 that were important to the health, welfare, and safety
3 of the people and as a result of this, the amendments
4 should pass even in spite of the fact some people might
5 get an advantage from this.
6 Some time later in 1963 or 4, a case developed
7 from Montgomery County involving these two amendments. By
8 this time the State Tax Commission had, now the Department
9 of Assessments and Taxation, had devised a system of
10 rules which tax people called regulations, which sought
11 to define farms in terms of whether or not they were
12 actually farmed, whether or not there were livestock and
13 many other criteria, and the purpose of these regulations
14 was to prevent a speculator or investor from buying up
15 property and perhaps putting a few goats or a few sheep,
16 we heard about sheep in this Convention before, confine
17 it to that, a few sheep out on this property and claiming
18 it was a farm, get the benefits of the preferential assess-
19 ment, then at a later time sell the property at a high
20 price and cash in on large capital gains.
21 In the case that came up in Montgomery County

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1 there were actually Black Angus cattle which the man
2 who was an acknowledged investor bought, put out on the
3 property, just let them go wild.
4 The Court of Appeals held that the regulations
5 promulgated by the State Tax Commission were of no
6 value because it said in effect that there was an objec-
7 tive test that had to be applied, namely, was it or not
8 land devoted to farm or agricultural use. If it was so
9 devoted to farm or agricultural use, then the test didn't
10 make any difference, it was the use to which the land
11 was put and nothing more which controlled; that was the
12 posture that is the posture of the matter today.
13 And the recommendation which the committee
14 makes seeks to attack it in this way. First,it mandates
15 that there shall be a separate assessment of land for
16 agricultural use. This is done by the use of the word
17 "shall" in the clause to which I directed your attention.
18 Second, however, it provides that the General
19 Assembly may by law define what is or what is not a farm
20 or what is or what is not agricultural use, thereby
21 permitting the General Assembly through its agency,

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1 legislative agency, the State Department of Assessments
2 and Taxation, to define farm, farm use, agricultural use.
3 There is another possibility of course. There
4 are several other possibilities. We could do nothing
5 about this subject in which event the law would stay
6 essentially as it is today, assuming that the words of
7 Article 43 were incorporated. Or you could provide
8 that the farm assessment would be permissive only by
9 striking the word "shall" and substituting in lieu
10 thereof "may". This would add little to what the
11 words actually connote and would really make them meaning-
12 less.
13 I think perhaps there will be more to be said
14 about that at a later time tonight. So much then for
15 Section 8.02.
16 8.02-1 deals with the question of equalization.
17 Here again, you have the end result of a fight which has
18 been going on in the state, those people who are concerned
19 about these matters, for a long, long time.
20 Once again, the Commission to which I referred
21 earlier directed their attention to the attempt to make

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1 assessment in this state equal throughout the state.

2 Unfortunately, although much has been done in

3 this area, much more needs to be done. The Committee's

4 Recommendation will, we believe, be the best guarantee

5 that the end result which has been desired for so long by

6 so many people will come to pass.

7 It states the state shall prescribe and ad-

8 minister uniform rules and methods for determining pro-

9 perty tax assessments. I call your attention to the word

10 "administer", because today the assessment procedure is

11 not administered by the state as a central agency.

12 The state Department of Assessments and Taxa-

13 tion, it is true, employs the Chief Supervisor of Assess-

14 ments of Baltimore City and the 23 counties, but other than

15 this and certain guidelines which it can produce, it does

16 not have the complete control of procedures.

17 This provision would, as you will see, require

18 that this shall be done. The second sentence of the

19 provision has a different thrust. It says state funds

20 distributed to political subdivisions on the basis of

21 assessments or property shall be determined by equal

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1 honest assessments between such subdivisions as may be
2 provided by law.
3 As you all know or certainly the great majority
4 of you know, the state distributes grants in aid to Bal-
5 timore City, and the 23 counties, in some instances on
6 the basis of their value.
7 Put it differently. The attempt has been made
8 and has been made in this state since 1924 to gauge
9 certain grants in aid on an ability to pay basis. This
10 means that the richer counties in effect seek to help the
11 poor counties.
12 The first step in this particular type of pro-
13 posal was in the educational field where the equaliza-
14 tion fund was worked so that counties with lower, poor coun-
15 ties would receive greater amounts of money from the state
16 than richer counties, in order to insure the fact that
17 every child in the state would at least have a modicum
18 of equal educational opportunities.
19 However, because of the unequal assessment
20 procedures this method, laudable as it was, proved to be
21 a raid on the state treasury.

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1 Again in the health field funds were distri-
2 buted for many years on the basis of catch as catch can.
3 The sum total of all this history was brought together
4 in 1956 when for the first time state monies were distri-
5 buted to local political subdivisions in the health field
6 on the basis of an equalizing formula.
7 Subsequently an attempt was made to do this with
8 respect to the educational field and this is true today.
9 What the committee's proposal is or comes to is this, that
10 all state monies which are distributed on the basis of
11 assessments should be distributed on the basis of equalized
12 assessments, so that nobody can gain and under an assess-
13 ment, no small county or large, for that matter, can
14 gain an advantage through not following the law.
15 This means in substance that a board perhaps,
16 or maybe the state Department of Assessments and Taxa-
17 tion will devise methods of equalizing assessments. These
18 methods are varied and many and I am not going to take
19 the time of the committee to describe the mathematical
20 combinations which go into the calculations looking
21 toward an ultimate equalization of assessments.

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1 Suffice it to say that this provision now will
2 mandate that this very desirable provision will become
3 part of the basic law which it is not today.
4 The final provision, Section 8.02-2 deals with
5 exemptions. Here again, a little history is in order.
6 When we were attempting to draft the provision
7 relating to the equalization of assessments,it was
8 recognized of course that the assessment is only one
9 facet of the tax gathering procedure. The other and
10 perhaps as important is the procedure of the process of
11 exemptions.
12 It might surprise you to know in this state
13 today there are over sixty different kinds of exemptions
14 from property taxes. They vary from county to county
15 throughout the state.
16 Now ,every time an exemption is passed, whether
17 it be passed because of good will or political motivations,
18 it in effect erodes the tax base. This has been felt
19 to be an improper procedure, and for many years, and
20 the Committee's report seeks to meet it by saying that
21 the exemptions shall be uniform.

1 But unfortunately, we have not been able to
2 go as far as we would like to go, because you will notice
3 that it deals with exemptions from state taxes only.
4 This applies of course to the state property tax, it
5 applies to anyother state tax, sales or income tax, and
6 in that regard we think it is a salutary provision.
7 It does not apply, unfortunately, to taxes
8 imposed by local political subdivisions. The reason for
9 this is there is such a variety of exemptions in the
10 state today vis-a-vis one another that we were informed
11 by the fiscal experts of the state that many millions of
12 dollars would be affected and dislocation of local political
13 subdivisions' economy if they were required to equalize
14 exemptions.
15 One example in point might be the fact that in
16 Baltimore County the inventory of manufacturers is not
17 exempt from tax, while it is in Baltimore City.
18 If what we are talking about with respect to
19 requiring Baltimore County to remove its exemption from
20 this kind of property were to occur, many billions of
21 dollars to that county alone would be involved.

1 By the same token, if we required Baltimore City
2 to come up to Baltimore County and impose a tax on inven-
3 tory a dislocation of the economy of the manufacturers
4 who are located there would undoubtedly occur.
5 As a matter of fact, this was attempted some
6 years ago and in a prior administration, and it was met
7 with such great hullaballoo that the then Mayor was
8 required or forced, really, to abandon his proposals.
9 So these cases where the practices have had to
10 take over in a sense and we have not been able to require
11 that all exemptions shall be uniform, we have said that
12 exemptions as far as any tax the state shall impose shall
13 be uniform.
14 This then is an explanation of the report, Mr.
15 Chairman.
16 THE CHAIRMAN: Are there any questions of the
17 Vice-Chairman for clarification, Delegate Rybczynski?
18 DELEGATE RYBCZYNSKI: Under Section 8.02-2, would
19 you please be so kind as to use the old age exemption in
20 Baltimore City as an example?
21 THE CHAIRMAN: Delegate Case.

1 DELEGATE CASE: The old age exemption is not an
2 exemption, Delegate Rybczynski. It is a credit. It is
3 not an exemption from tax, it is a credit against the
4 tax. It does not -- this does not apply to tax credits.
5 THE CHAIRMAN: Delegate Rybczynski.
6 DELEGATE RYBCZYNSKI: Would it be fair then to
7 say that it does not affect the assessment, it merely
8 goes to the tax itself?
9 THE CHAIRMAN: Delegate Case.
10 DELEGATE CASE: I would not say that might not be
11 the case. I said earlier why I was not going to detail
12 the method by which equalization could take place. I
13 think what you are referring to is how the old age
14 exemption or credit which it really is, would affect
15 Section 8.02-1.
16 It could indeed be taken into consideration by
17 a board of equalization and reviewed under appropriate
18 statutes passed by the General Assembly.
19 THE CHAIRMAN: Delegate Macdonald.
20 DELEGATE MACDONALD: Delegate Case, referring
21 your attention to Section 8.02-2, is there any provision

1 in the present Constitution relating to exemptions insofar
2 as local taxes are concerned?
3 THE CHAIRMAN: Delegate Case.
4 DELEGATE CASE: Delegate Macdonald, you mean
5 Section 8.02-1?
6 THE CHAIRMAN: Delegate Macdonald.
7 DELEGATE MACDONALD: No, -2. Exemptions. Your
8 last section.
9 THE CHAIRMAN: Delegate Case.
10 DELEGATE CASE: 8.02-2?
11 THE CHAIRMAN: Delegate Macdonald.
12 DELEGATE MACDONALD: Yes.
13 DELEGATE CASE: What is your question again?
14 THE CHAIRMAN: Delegate Macdonald.
15 DELEGATE MACDONALD: I understood you to say
16 this applies simply to state taxes, taxes imposed by
17 the state.
18 THE CHAIRMAN: Delegate Case.
19 DELEGATE CASE: That is correct.
20 THE CHAIRMAN: Delegate Macdonald.
21 DELEGATE MACDONALD: Are there any standards in

1 the present Constitution, similar standards relating to
2 local taxes?
3 THE CHAIRMAN: Delegate Case.
4 DELEGATE CASE: No, there are none.
5 THE CHAIRMAN: Delegate Macdonald?
6 DELEGATE MACDONALD: There are none.
7 Well, going back to the matter of assessments,
8 do you agree with the decision of the Court of Appeals in
9 the Alsop case?
10 THE CHAIRMAN: Delegate Case.
11 DELEGATE CASE: Delegate Macdonald, due to the
12 name of the case I described to you in a rather rambling
13 way, I am afraid earlier an Alsop case came up from Mont-
14 gomery County which held that purely objective tests were
15 to be used to determine whether or not property devoted
16 to agricultural use would be granted the use assess-
17 ment as the Constitution provides.
18 If you say whether I agree with it or not, had
19 I been counsel for the other side, I am not so sure I
20 would agree with it, but I can see how the Court of Appeals
21 reached the result it did and having reached that result, the

1 problem now is what to do about it.

2 THE CHAIRMAN: Delegate Macdonald.

3 DELEGATE MACDONALD: In view of that decision,
4 how are we going to restrict the tax break which will
5 result from your recommended provision to bona fide
6 farmers?

7 THE CHAIRMAN: Delegate Case.

8 DELEGATE CASE: By the language which is in
9 line 8 of the section, as prescribed by law. What that
10 means, Delegate Macdonald, is this, that the General
11 Assembly shall provide for a use exemption.

12 That is to say, it shall make the classification,
13 but how that classification is defined shall be up to
14 the legislature or its delegated authority. So that in
15 effect what this does, what this particular section would
16 do would be to overrule the Alsop case by permitting the
17 General Assembly and/or the State Department of Assess-
18 ments and Taxation to set up standard rules and regula-
19 tions that would have to be complied with before you would
20 have a farm.

21 THE CHAIRMAN: Delegate Macdonald.

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1 DELEGATE MACDONALD: Wasn't that the situation
2 in the Alsop case? Didn't we have a statutory standard
3 and didn't we have 12 or 14 criteria laid down by the
4 State Department of Assessments and Taxation?
5 THE CHAIRMAN: Delegate Case.
6 DELEGATE CASE: That is right, but unfortunately,
7 the Constitution did not provide as this provision
8 does that the legislature could define.
9 What Article 43 says is, I will quote it to
10 you, "The legislature may provide that land actively
11 devoted to farming or agricultural use shall be assessed
12 on the basis of such use and shall not be assessed as if
13 subdivided."
14 The Court of Appeals construed that language
15 to make it absolutely mandatory that the objective test
16 be employed. Our language is to the contrary. It says
17 that property shall be assessed if devoted to agricul-
18 tural use as prescribed by law.
19 I want to make it perfectly clear on the record
20 that the intention of this provision is to permit the
21 definitional power of the General Assembly, which may be

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1 delegated to the State Tax Commission or state Department
2 of Assessments and Taxation, to control what is or what
3 is not a bona fide farm.
4 THE CHAIRMAN: Delegate Macdonald.
5 DELEGATE MACDONALD: Am I correct in understand-
6 ing you are updating this assessment favor for farmland?
7 THE CHAIRMAN: Delegate Case.
8 DELEGATE CASE: The Committee Report requires
9 that some classification be set up for farms,this is
10 correct.
11 THE CHAIRMAN: Delegate Macdonald.
12 DELEGATE MACDONALD: Am I also correct in
13 understanding that this matter of giving this tax break
14 to farm lands is rather controversial?
15 THE CHAIRMAN: Delegate Case.
16 DELEGATE CASE: I suppose, Delegate Macdonald,
17 that any exemption or credit which is given in the tax
18 field is controversial. Perhaps the most controversial of
19 all and which one is now being worked on by the General
20 Assembly's Special Committee on State Taxation is the giving
21 or affording exemptions to manufacturing plants.

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1 Of course this item runs into many, many more
2 millions of dollars than does the use assessment type
3 thing we are talking about.
4 So any provision like this is subject to con-
5 troversies.
6 THE CHAIRMAN: Delegate Macdonald.
7 DELEGATE MACDONALD: The matter you just
8 mentioned is not mandated, is it?
9 THE CHAIRMAN: Delegate Case.
10 DELEGATE MACDONALD: I mean, you don't recommend
11 that that matter be mandated, do you?
12 THE CHAIRMAN: Delegate Case.
13 DELEGATE CASE: No, it is not recommended that
14 it be mandated but by the same token, as I said earlier, the
15 only way it could be mandated would be to require equaliza-
16 tion of exemptions and for the reasons I stated earlier,
17 this is found to be impractical.
18 THE CHAIRMAN: Delegate Needle.
19 DELEGATE NEEDLE: Delegate Case, you mentioned
20 that the first sentence in paragraph B of Section 8.01
21 had not yet been considered by this Convention. That is

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1 the Grandfather Clause so far as the political subdivi-
2 sions are concerned. But that sentence Number 2 had been
3 considered.
4 I think actually both have already been passed
5 upon and are in the last sentence of 7.05, the Local Govern-
6 ment article, if I am not mistaken, so that sub-paragraph B
7 would not require any further action at this time. Is
8 that not correct?
9 THE CHAIRMAN: Delegate Case.
10 DELEGATE CASE: I would defer to you, Delegate
11 Needle, on this. You are the expert on local government.
12 THE CHAIRMAN: Delegate Needle.
13 DELEGATE NEEDLE: Not at all, but I think it
14 would save a lot of time if I just read to you that one
15 sentence. You might agree Paragraph B would not require
16 any further action.
17 THE CHAIRMAN: Delegate Case.
18 DELEGATE CASE: If what you are going to do
19 is something that will not require action, I will agree
20 without your reading it.
21 THE CHAIRMAN: Delegate Needle.

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1 DELEGATE NEEDLE: If you agree, that's fine.

2 THE CHAIRMAN: Delegate Sollins.

3 DELEGATE SOLLINS: Delegate Case, with regard
4 to Section 8.01a, it is not the intention of the Committee
5 I would assume, that an elected school board has any
6 legislative power and therefore does not have the power
7 to tax.

8 THE CHAIRMAN: Delegate Case.

9 DELEGATE CASE: Well, I could conceive of an
10 elected school board, assuming that under other provisions
11 of the Constitution it could be delegated legislative
12 powers, and I am not passing on that subject. In making
13 that assumption then, it would be an elected body exer-
14 cising legislative power.

15 THE CHAIRMAN: Delegate Sollins.

16 DELEGATE SOLLINS: Then it is possible within the
17 meaning of this section for an elected school board to
18 impose a tax if it should be so authorized by the General
19 Assembly, is that what I understand you to say?

20 THE CHAIRMAN: Delegate Case.

21 DELEGATE CASE: Well, I have to consider whether
or not under the present Constitution as it comes out it

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1 would be possible to delegate legislative powers to an
2 elected school board.
3 This hasn't been settled yet, as far as I
4 know. If it has been as far as you know, I would be glad,
5 like I did with your brother Needle, to accept your sugges-
6 tion, but all I am saying is that if the General Assembly
7 can create a type of board which is elected and if it
8 can delegate legislative powers to that board, well,
9 then it could as a third corollary delegate to them the
10 power to tax.
11 I can't conceive this would happen, but it
12 might be possible.
13 THE CHAIRMAN: Delegate Raley.
14 DELEGATE RALEY: Delegate Case, in pursuing that
15 question just a little bit further that Delegate Sollins
16 had, it was my understanding that in committee when we
17 discussed this that it meant what it said, that taxes
18 could only be imposed for purposes, public purposes by the
19 elected representatives of the people exercising legisla-
20 tive power and that if any taxes like the example he gave,
21 the legislative body could impose a tax, collect the tax,

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1 give the money, but they couldn't give that power, this
2 was the very reason we had it, that no taxation without
3 representation, as I recall it.
4 THE CHAIRMAN: Delegate Case.
5 DELEGATE CASE: May I say this -- had you
6 finished?
7 DELEGATE RALEY: Yes.
8 THE CHAIRMAN: Delegate Case.
9 DELEGATE CASF: You didn't follow the assumption
10 I made with Delegate Sollins. The assumption I made was
11 it would be possible to set up a new kind of entitv, we
12 know not the likes of which right now, to which there could
13 be delegated legislative-type powers. I don't know of any
14 such thing, but I am not ruling out in the effort here of
15 being completely accurate and candid , I am not ruling out
16 the possibility that it could be done, either under the
17 Constitution we are producing here or some amendment to it
18 which might be later devised.
19 If the amendment was devised which would create
20 a Board which would handle schools to which all power would
21 be delegated to it to make the laws for those schools and

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1 so on, then this would be an elected body exercising legis-
2 lative power.
3 In that case this is -- this provision is flexible
4 enough to permit it to do the job it would have to do.
5 THE CHAIRMAN: Delegate Maurer.
6 DELEGATE MAURER: Delegate Case, I have another
7 question for you on 8.01a and also dealt with the elected
8 representative of the people exercising legislative
9 powers, but I wonder for example, whether the new Board
10 of Review could be granted power to set the state property
11 tax rate?
12 As I understand the existing wording in the
13 present Constitution, all that was required was the consent
14 of the legislature. Does this changed wording which re-
15 quires that taxes shall be imposed only by the elected
16 representatives of the people exercising legislative
17 powers, affect the way the Board of Review could operate?
18 THE CHAIRMAN: Delegate Case.
19 DELEGATE CASE: The Board of Review, as I
20 understand it, is not going to be composed of elected
21 officials entirely. So that it would not have the power

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1 to impose a tax.

2 There is a difference between imposing a tax
3 and setting a rate. The tax when you talk about -- I
4 am sure what you have in mind is the fact the Board of
5 Public Works in the past has set the tax rate. It has
6 done this in this way. The General Assembly itself, when
7 it authorizes the bond issue imposes a tax.

8 Each of the bond bills which are enacted, in
9 the last, usually the last clause, says a tax is hereby
10 imposed in rates and amounts such as to pay the indebted-
11 ness of the obligations hereby authorized and the
12 interest thereon until maturity -- so that the legislature
13 is imposing the tax, delegating the power to the Board to
14 set the rate. This would not be changed under this.

15 THE CHAIRMAN: Delegate Maurer.

16 DELEGATE MAURER: If there is a distinction
17 between imposing a tax and setting the rate, could it
18 then be that say, county commissioners would impose a
19 local property tax but authorize any other or delegate to
20 an appointed school board the power to set a portion of
21 that tax rate?

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1 THE CHAIRMAN: Delegate Case.

2 DELEGATE CASE: This particular provision does
3 not change in any way as I read it the laws we have today
4 on this point. It keeps it just where it is.

5 THE CHAIRMAN: Delegate Clagett.

6 DELEGATE CLAGETT: Delegate Case, with reference
7 to Section 8.02 and 8.02-2, where you deal with
8 classification, what do you mean by classification by
9 events or classification of events?

10 THE CHAIRMAN: Delegate Case.

11 DELEGATE CASE: Delegate Clagett, there are
12 three generic incidents of taxation. One is property.
13 That is to say the real or personal property or chose
14 in action or any other kind of property both tangible or
15 intangible, that you care to mention.

16 This can be taxed, it can be levied upon. There
17 is the common case. The second generic instance is the
18 taxpayer. Here we deal with the -- you could deal with
19 the poll tax, for example, which of course is not allowed
20 as a prerequisite to voting, but we have seen direct
21 capitation taxes in other states, never in Maryland, to

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1 my knowledge.

2 And so on. But the taxpayers are an integral

3 part of the trilogy. The third part and perhaps the most

4 important part is the events. This is the intersection

5 between the taxpayer and the property. That is to say, the

6 receipt of money, the earning of income, transmission

7 of property by death. This is an event, and called a

8 taxable event. This is what it means, so that it covers

9 the entire spectrum of human activity vis-a-vis his property

10 and his environment, which conceivably could be subject

11 to taxation.

12 THE CHAIRMAN: Delegate Clagett.

13 DELEGATE CLAGETT: In other words, it is the

14 relationship between, then, the taxpayer and his property

15 which would be determinative of the tax?

16 THE CHAIRMAN: Delegate Case.

17 DELEGATE CASE: It could be, it wouldn't neces-

18 sarily have to be.

19 THE CHAIRMAN: Delegate Clagett.

20 DELEGATE CASE: Let me give you an example of

21 event. A man dies and leaves you a million dollars. I

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1 hope this happens. The act of transmitting the property
2 from the dead to the living is an event. In Maryland
3 we have right now what is known as an inheritance tax, which
4 you know. The inheritance tax is based upon your receiving
5 that property.
6 The instance of taxation, the event is the receipt
7 by you of the million dollars from the decedent. On the
8 other hand, the Federal government imposes an estate
9 tax. This is a tax on the estate vel non, not a tax on
10 the act of transmission, but on the tax of the estate as
11 it was found on the date of the decedent's death, or one
12 year thereafter.
13 It would be a tax on the property;both would be
14 death taxes, but one would tax the property, the other
15 would tax the event.
16 THE CHAIRMAN: Delegate Clagett.
17 DELEGATE CLAGETT: In what way would this be
18 determinative in the determination by the General Assembly
19 of the bona fide use of farm land?
20 THE CHAIRMAN: Delegate Case.
21 DELEGATE CASE: I am not sure I understand that,

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1 Delegate Clagett.

2 DELEGATE CLAGETT: As I understand 8.02, the

3 agricultural use --

4 THE CHAIRMAN: Could the Chair cut across this?

5 DELEGATE CLAGETT: Yes.

6 THE CHAIRMAN: I think Delegate Case, what he

7 is asking is in what way would you relate agricultural

8 use and exemption for agricultural use to the trilogy you

9 just mentioned?

10 I assume your answer is you relate it to the

11 first item.

12 DELEGATE CASE: Yes.

13 THE CHAIRMAN: Delegate Clagett.

14 DELEGATE CLAGETT: Thank you.

15 THE CHAIRMAN: Delegate Henderson.

16 DELEGATE HENDERSON: In this section dealing

17 with exemptions, you apparently leave out any reference to

18 what I might call local exemptions. This simply deals

19 with state taxes and any tax imposed by the state.

20 Doesn't that rather leave things in limbo? I

21 call your attention to the fact where you are dealing with

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1 the political subdivisions on the preceding page, you say
2 that they shall enjoy, retain the taxing powers they have
3 at the time of the adoption of the Constitution unless
4 withdrawn by the General Assembly.
5 Would the same thing be true of exemptions? If
6 so, why isn't that stated in the exemption section,
7 because it seems to leave them completely unregulated and
8 beyond the control of anyone.
9 THE CHAIRMAN: Delegate Case.
10 DELEGATE CASE: Delegate Henderson, I think the
11 answer to your question is that insofar as the power to
12 exempt is carried with the power to tax, we discussed this
13 at great length, and it is my feeling that this does
14 follow. And that the due process clause would protect
15 the taxpayer from unequal exemption within a taxing
16 jurisdiction.
17 There is some doubt about this, I am willing
18 to acknowledge that fact. It has also been suggested that
19 this provision might have contained another sentence
20 which in effect would say that for the future to
21 make it abundantly clear this would follow, for the future

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1 all exemptions would have to be equalized or uniform.

2 We did not include that in the particular

3 provision which is here before us, because in my judgment

4 at least substantive due process would meet that point.

5 As far as existing exemptions are concerned, the

6 section did not include that, although I might say the

7 Eney Commission draft did, because the testimony before

8 the Committee was that it would occasion a very serious,

9 perhaps even catastrophic, dislocation of the economy of

10 certain of the political subdivisions.

11 THE CHAIRMAN: Delegate Henderson.

12 DELEGATE HENDERSON: That may be true, but the

13 example you gave of why you didn't put any language like

14 that was that Baltimore County, you gave as an example,

15 had a manufacturer's exemption or did not have a manufac-

16 turer's exemption, and Baltimore City did.

17 Within those two separate jurisdictions, we

18 are delegating local authority to the subdivisions, counties,

19 building them up, that wouldn't present any problem in

20 due process but it nevertheless is an undesirable thing,

21 because you have one county bidding against another for

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1 manufacturing industry and things of that sort by offering
2 exemptions.
3 It seems to me in the long run that is
4 entirely an undesirable thing and by leaving any reference
5 of it out of the Constitution, you make it almost im-
6 possible for a change ever to occur, do you not?
7 THE CHAIRMAN: Delegate Case.
8 DELEGATE CASE: We hope not, Judge Henderson.
9 DELEGATE HENDERSON: I am wondering how it
10 could be.
11 THE CHAIRMAN: Delegate Case.
12 DELEGATE CASE: Let me say this. That this
13 is of course a choice of relative values again. For
14 the members of the Committee, let me restate what I think
15 Judge Henderson is getting at here.
16 It is a good point, and I will say exactly
17 what the Committee did. We have in the state today a
18 number of counties which afford certain tax advantages
19 for the location of industry. Other counties have not seen
20 fit to have the General Assembly provide them with this
21 tool.

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1 It was the feeling of the Committee that this
2 procedure was one of local justification and since in a
3 large sense the -- in a complete sense as you will see
4 tomorrow when we get into the state indebtedness provision,
5 it is hoped the state will get out of the property tax
6 field.
7 The imposition of local property taxes under the
8 home rule theory of government is going to be left pretty
9 much to the local governments. And not controlled by the
10 state.
11 It seemed to us this is in keeping with the
12 home rule theory which the Convention really has already
13 adopted.
14 THE CHAIRMAN: Delegate Henderson, the Chair
15 would like to add to that two comments. One, I take it
16 from the consideration of the recommendation on local
17 government that the Committee of the Whole has already in
18 effect approved the concept that you just expressed
19 disapproval of, namely the fact that the local subdivi-
20 sions,at least the counties, could scrimp in this area,
21 keeping in mind, however, the provision that is in that

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1 local article, this is the second point, that the legis-
2 lature would have to grant the express power to tax.
3 Presumably grant the power to tax would include
4 the grant of the power to grant or withhold exemptions.
5 So that it is not a part of the reserved or shared powers
6 of the local subdivision, but would depend upon legislative
7 enactment.
8 Delegate Henderson.
9 DELEGATE HENDERSON: Is it my understanding,
10 then, I would like to have the sense of the Committee on
11 it, that while this section dealing with exemptions is
12 silent as to local exemptions, that it still would be
13 within the power of the legislature to withdraw that at
14 any time? Is that correct?
15 In other words, if the local government granted
16 an exemption or granted different exemptions, could they
17 be made uniform by the General Assembly by adopting a
18 general law on the subject?
19 THE CHAIRMAN: Delegate Case.
20 DELEGATE CASE: If the word "exemption" is
21 embraced within the words "taxing powers", this would

1 be correct, and I think it is.

2 THE CHAIRMAN: Delegate Gullett.

3 DELEGATE GULLETT: Delegate Case, going back to

4 Section 8.01, paragraph a, where it says elected repre-

5 sentatives of the people exercising legislative powers, the

6 intent I assume here is that the legislative powers

7 these elected representatives would exercise would be for

8 that particular body for which they were in fact elected,

9 in the event that say, two sets of county commissioners

10 were given legislative power to sit over a bi-county

11 agency, and actually legislate for that bi-county legis-

12 lature.

13 For instance, Maryland National Capital Parks

14 and Planning Commission, would they in this set of

15 circumstances be, would this interpretation here allow

16 them to tax on the bi-county basis?

17 THE CHAIRMAN: Delegate Case.

18 DELEGATE CASE: Not if they were elected as

19 county commissioners, but served as appointed officials in

20 effect to this board. They would have the power to

21 impose a tax necessary for their respective counties which

1 could be used in combination for the agency, but not as
2 an agency as such, I wouldn't think.
3 THE CHAIRMAN: Delegate Gullett.
4 DELEGATE GULLETT: In the local government sec-
5 tion under regional governments, in a couple of places
6 we did put in the words "popularly elected representatives."
7 Did you consider this wording here?
8 THE CHAIRMAN: Delegate Case.
9 DELEGATE CASE: This is something the style
10 people can work out. We have no brief for one or the
11 other.
12 THE CHAIRMAN: Delegate Hanson.
13 DELEGATE HANSON: In Section 8.02 there is language
14 relating to the farm land assessment act.
15 Will this in any way require a change in the
16 status of that act or in any way affect the status of that
17 act or its administration as it now stands?
18 THE CHAIRMAN: Delegate Case.
19 DELEGATE CASE: I thought I would be hearing
20 from you sooner or later about this subject. Yes, as I
21 tried to state in answer to the question from Delegate

1 Macdonald, the idea here is to overrule the Alsop Case.
2 The Alsop Case was based primarily on the language in
3 Section 43 of the present declaration of rights. The
4 Court of Appeals said, I have the language here somewhere--
5 Mr. Lewis is looking for it. He may not be able to find
6 it.

7 But in essence, what the Court of Appeals said
8 in its Alsop case was that it could not pass upon or
9 inquire into the efficacy of the regulations which had
10 been promulgated by the State Department of Assessments
11 and Taxation, because Article 43 mandated that if property
12 was devoted to farm or agricultural use and it was so
13 used, that was the end of the matter, no matter whether the
14 fellow who owned it was an investor, speculator, or
15 true farmer.

16 The question was the use vel non that was the
17 end of it. Our language seeks to change this by saying
18 that there shall be a classification for farm use but that
19 classification shall be defined by law. And this envisages
20 the General Assembly passing a definitional law which
21 will either itself define what a farm is or is not or

1 delegate the authority to make that definition to the
2 Department of Revenue and Taxation, which I hope will be
3 set up.
4 In the Alsop Case the Court said "The question
5 here is not whether the owner and taxpayer is engaged in
6 a bona fide farm operation or is permitting a neighbor
7 to use the land for raising cattle without monetary
8 consideration, but instead is whether the land is actively
9 devoted to a farm or agricultural use."
10 Now, our provision seeks to change this and give
11 the legislature or the state Department of ASsessments and
12 Taxation the right to say what is a farm.
13 THE CHAIRMAN: Delegate Hanson.
14 DELEGATE HANSON: Does not the Agricultural
15 Assessments Act at this time do exactly that by establishing
16 the criteria in the law by which a definition of agricul-
17 ture is made and delegates to the Department of Assess-
18 ments and Taxation the power to establish rules for the
19 implementation of the law?
20 THE CHAIRMAN: Delegate Case.
21 DELEGATE CASE: The Act says that but the Court

1 of Appeals said it didn't mean anything. That is the
2 whole point.
3 THE CHAIRMAN: Delegate Hanson.
4 DELEGATE HANSON: Then I am afraid we may have
5 a disagreement on the language of the Court, which as I
6 read the case, did not get to the question of the power
7 of the legislature in this area, but rather based its
8 finding on what it says was the fact that the assessor
9 and the tax courts had misconstrued the provision.
10 Do we read the case the same way?
11 THE CHAIRMAN: Delegate Case.
12 DELEGATE CASE: No, sir, we apparently don't.
13 I think I would have to suggest that you see your lawyer
14 Mr. Scanlan, about this, because I think you are reading
15 it incorrectly. He wasn't listening, that's why I said
16 that.
17 THE CHAIRMAN: Delegate Hanson.
18 DELEGATE CASE: I wanted to get his attention.
19 DELEGATE HANSON: I was hoping, Mr. Chairman, I
20 would get some free legal advice from Mr. Case, but I
21 can see we may not get along as client and attorney.

1 THE CHAIRMAN: Delegate Case.

2 DELEGATE CASE: You are safe for a while, Dele-
3 gate Hanson. But may I, to implement this, Delegate Hanson,
4 getting back in a more serious vein, after finding these
5 old criterias were out on the Alson farm, the Court of
6 Appeals said, I now again will quote you in addition to
7 what I already quoted, "This was enough to require a
8 finding that the land was in fact a bona fide farm with-
9 out resorting to any of the other criteria set forth in
10 Regulation 9, some of which seemed to have a related use
11 as a guide in determining whether or not a particular
12 tract of land is a farm within the meaning of the
13 Constitutional statutory provisions."

14 This was enough. All they had to do was see
15 the sheep on the pasture. Then all the rest of the
16 criteria went out the window.

17 THE CHAIRMAN: Delegate Hanson.

18 DELEGATE HANSON: What in the judgment of the
19 Committee is the manner in which the General Assembly
20 will make the decision as to what is a bona fide farm?

21 I note in the Committee Report that the Committee

1 has deleted the provision that was in the Commission draft
2 to link open spaces use with agricultural uses on the
3 grounds that open spaces are too difficult to define.
4 I wonder if the Committee looked into the ease
5 with which agriculture can be defined?
6 THE CHAIRMAN: Delegate Case.
7 DELEGATE CASE: Yes, the Committee had before it
8 not only Regulation 9 of the state Department of Assess-
9 ments and Taxation, various laws which I have talked about
10 in my presentation, but it had a great number of wit-
11 nesses including the Chief Supervisor of Assessments of
12 the state, Mr. Albert W. Ward, his Deputy, Mr. Riley, and
13 a great many other people.
14 They had all said that given the right to make
15 the classification, they can do it. They exhibited, for
16 example, a questionnaire which contained about 7, 6 or 7
17 pages, going into many facets of this.
18 The sum total of it all is that the administra-
19 tor says they can within a reasonable degree of accuracy
20 and a complete degree of fairness define a farm for this
21 purpose, if they are given the legislative right to do so.

1 But the Alsop case withdrew that right. What
2 we are trying to do is give them that right back again.
3 THE CHAIRMAN: Delegate Hanson.
4 DELEGATE HANSON: Would giving them this right
5 require the legislature to do anything more than exists in
6 the present law? Can the legislature simply conclude it
7 has already defined agriculture under the present law and
8 continue the present arrangement without enacting any
9 new law?
10 THE CHAIRMAN: Delegate Case.
11 DELEGATE CASE: Well of course, I can't answer
12 for what the legislature might or might not do. Assuming
13 this provision on classification becomes part of the inte-
14 gral law of the state, if I were drawing the Act I would
15 have drawn it a little differently, but it might well be
16 that either through transitory legislation, which this
17 body might devise, or otherwise, the law would be different
18 than it is today.
19 THE CHAIRMAN: Delegate Hanson.
20 DELEGATE HANSON: Am I not correct then, in
21 concluding that the power that is given the legislature

1 in the first clause of Section 8.02 is a sufficient grant
2 of power to the legislature to permit it to define agri-
3 culture just as it would permit it to define open space or
4 any other use?

5 THE CHAIRMAN: Delegate Case.

6 DELEGATE CASE: You are absolutely right, and I
7 think in fairness to you and to the Committee it ought
8 to be stated very clearly why there is a seeming hanging
9 out of the wording agriculture in this document: the
10 reason Delegate Hanson and ladies and gentlemen of the
11 Committee, is two-fold. First, every agricultural group,
12 every society, every agency within the state came before
13 the Committee through its representatives and asked
14 specifically that the word be included, because of their
15 fears that if it were not included, that the agricultural
16 economy of this state might be seriously affected.

17 I think that the majority of members of the
18 Committee felt that this was a bona fide and justified
19 position for them to take. I am not going into all of the
20 ramifications of that now, but suffice it to say a most
21 persuasive case was presented for the proposition that

1 the true bona fide farmer needed and deserved protection.

2 That is point one.

3 Point two is that of course this matter had

4 been up and down the legal and legislative hill for

5 quite a few parades in the recent past. Bear in mind the

6 sequence of events and again I call this to the attention

7 of the Committee.

8 First the law is passed authorizing this treat-

9 ment. It is vetoed by the governor, a lot of publicity

10 is given to it. The General Assembly passes it over his

11 veto. Court of Appeals declares it to be unconstitutional.

12 With that much spotlight on the subject, you get

13 the legislature reconvening, a Constitutional amendment

14 passed, so that you have a Constitutional amendment

15 suggested by the General Assembly which in effect sought to

16 overturn a decision of the Court of Appeals, sought to

17 overturn a decision of the governor of the state.

18 Here the issue was clearly drawn. It was clearly

19 drawn and in no unmistakable terms -- the vote on this

20 was overwhelmingly in favor of granting the farm use

21 assessment.

1 We felt on our Committee that this was a fact
2 that could not be brushed aside, it had to be taken into
3 account. What we are doing here today, I forgot the vote,
4 I can give it to you in a minute -- it was overwhelmingly
5 in favor of this thing. This in view of the fact the Court
6 of Appeals itself had said it was formerly unconstitutional.
7 You couldn't have an issue where the spotlight was more
8 directed on the subject matter.
9 THE CHAIRMAN: Delegate Hanson.
10 DELEGATE HANSON: I would agree with the direc-
11 tion of the spotlight and importance of the subject matter,
12 but assuming with me for a moment that whatever is said
13 here so long as the law is not repealed by some action in
14 this new Constitution that the farm land assessments Act
15 or some similar act giving tax advantages to bona fide
16 farmers is to remain on the books in Maryland, why did
17 the Committee decide to use the mandatory "shall" in
18 the creation of any classifications that require the
19 establishment of a class for agricultural uses rather
20 than to continue the current language of the Constitution
21 which is permissive where it says in Article 43, the

1 legislature may provide, and so forth?

2 THE CHAIRMAN: Delegate Case.

3 DELEGATE CASE: Delegate Hanson, we now reach

4 me in an ambivalency which results from the fact that

5 I was a member of the so-called Tracy Commission on the

6 one hand, and a member of this Convention on the other.

7 You will find if you read the report of the

8 Commission that the word "may" was used. I was Chairman

9 of the Tax Committee of that Commission and it was

10 my recommendation at the time, it was the unanimous recom-

11 mendation of the Commission, that the word "may" should

12 be used. That is the way it came to this body.

13 On the other hand, an abundance of intelli-

14 gence came to the Committee by way of testimony from

15 interested groups, from farmers singly and in combina

16 tion, from the State Board of Agriculture, from the Grange

17 from the Farm Bureau, from farmers throughout this state.

18 I would say the biggest single hearing that our Committee

19 held; I would stand corrected on this by any members, but

20 it is my recollection the most people we had at any one

21 time was the people who came from all over the state to

1 speak on this issue.

2 As a result of that it was felt by the

3 Committee that agriculture industry in this state de-

4 served a modicum of protection in the use of the word

5 shall . This would give that to the bona fide farmers

6 now without any doubt, whereas the word "may" might

7 not.

8 THE CHAIRMAN: Delegate Hanson, do you have

9 further questions?

10 DELEGATE HANSON: Yes, Mr. Chairman, but it

11 would seem to me - Mr. Case, I will put a question mark

12 at the end of this -- that the clause we are discussing

13 here, as you suggested earlier, does not actually add

14 any powers to the power of the General Assembly but on the

15 other hand, does it not provide a limitation on the power

16 of the General Assembly if in its discretion at some future

17 time it wishes to establish classifications, but looking

18 at the application of the Farm Land Assessment Act over

19 a period of time, perhaps finding it unworkable or finding

20 it impossible ultimately to distinguish between bona fide

21 farmers and farmers not so bona fide that such action

1 should not stand, it would be in a position of not being
2 able to establish taxable application on property.
3 Would that not be the case?
4 THE CHAIRMAN: Delegate Case.
5 DELEGATE CASE: I thought you were going to
6 put that question mark in sooner or later. I I don't
7 think it would be the case. The General Assembly is given
8 clear power to classify and the use of the word or use of
9 the class relating to agriculture is so worded, at least
10 I hope it is so worded, I believe it is, and members of
11 the Committee believe so -- it is not written in such a
12 way as to limit or in any way hamstring the classification
13 or sub-classification of land for other purposes.
14 THE CHAIRMAN: Delegate Hanson.
15 DELEGATE HANSON: The clause as I read it
16 says that which classes shall include property. Would
17 this not mean then that a classification system could be
18 established which did not include agricultural property?
19 THE CHAIRMAN: Delegate Case.
20 DELEGATE CASE: The way I read it it means
21 there may be classifications of land in any numbers of

1 categories you care to assure, but one classification
2 that has to be made is classification of farms.
3 THE CHAIRMAN: Delegate Hanson.
4 DELEGATE HANSON: I have a number of questions,
5 but I don't want to wear out the indulgence of the
6 Committee.
7 THE CHAIRMAN: If you have protracted questions,
8 I suggest we resume tomorrow.
9 DELEGATE HANSON: I would like to discuss this
10 with Mr. Case privately, but I also want to discuss it
11 with him publicly.
12 THE CHAIRMAN: Before we leave this, the Chair
13 would ask Delegate Case and also Delegate Yeager before
14 we resume tomorrow to consider Section 8.01b in conjunc-
15 tion with Section 7.05.
16 It seems to the Chair that 8.01b goes further
17 than 7.05. It says the same thing as 7.05 as to counties
18 as to which 7.05 is limited but 8.01b says political sub-
19 divisions.
20 I would like to know whether the Committee on
21 Finance is recommending that this be extended to municipal

1 corporations.

2 The Chair recognizes Delegate Powers.

3 DELEGATE POWERS: Mr. Chairman, I move the

4 Committee of the Whole rise and report it has not yet

5 completed consideration of Committee Recommendation SF-3.

6 THE CHAIRMAN: Is there a second?

7 (The motion was seconded.)

8 THE CHAIRMAN: All in favor signify by saying

9 Aye; contrary, No. The Ayes have it, and it is so

10 ordered.

11 (The mace was replaced by the Sergeant at Arms.)

12 (Whereupon, at 10:25 p.m., the Committee of the

13 Whole arose, and the Convention reconvened.)

14 THE PRESIDENT: The Convention will please come

15 to order.

16 On behalf of the Committee of the Whole the

17 Chair reports that the Committee has had under consideration

18 Committee Recommendation Number SF-3. It still has it

19 under consideration, and desires leave to sit again.

20 Are there any announcements by committee chair-

21 men?

1 Any announcements by any other delegates? Any
2 delegates present now not present at roll call desire to
3 indicate their presence may do so on the supplementary
4 roll call.
5 The Clerk will record the supplementary roll
6 call.
7 Delegate Powers, the Chair's intention has been
8 called to the fact that neither your motion nor the
9 Chair's report covered Committee Recommendation SF-2.
10 I assume your motion was so intended.
11 DELEGATE POWERS: My motion intended to include
12 reporting on the action taken by the Committee of the
13 Whole with respect to Committee Recommendation SF-2.
14 THE PRESIDENT: That being the case, the Chair
15 on behalf of the Committee of the Whole further reports
16 that the Committee had under consideration Committee
17 Recommendation SF-2. That it approved the Recommendation
18 with amendments. That report of the Committee of the
19 Whole is referred to the Committee on Style, drafting and
20 arrangement.
21 There is a minority report, R&P-1(D). The Clerk

1 will read the report.

2 MR. QUILLEN: Minority Report R & P-1(D) by

3 Delegates Bennett, Bothe, Burgess, Hardwicke, Mitchell,

4 L. Taylor, and Willoner, of the Committee on Personal

5 Rights and Preamble.

6 "A Minority REport to provide that Section 3 of

7 the Declaration of Rights include an express prohibition

8 against discrimination based on race, color, religion

9 or national origin, so that the Section shall read as

10 follows:"

11 THE PRESIDENT: Minority Report R&P-1(D) is

12 received and will be distributed.

13 Are there any other announcements?

14 The Chair recognizes Delegate Powers.

15 DELEGATE POWERS: Mr. President, I move we

16 adjourn to 10:00 tomorrow morning.

17 THE PRESIDENT: The motion was seconded. All

18 in favor signify by saying Aye; contrary, no. The Ayes

19 have it, and it is so ordered.

20 (Whereupon, at 10:30 p.m. the Convention

21 recessed, to reconvene at 10:00 a.m., the following morning.)

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